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No. 52] NEW DELHI, SATURDAY, DECEMBER 28, 1985/PAUSA 7, 1907

इस भाग को भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मन्त्रालयों द्वारा जारी किये गये सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than the Ministry of Defence)

कार्मिक और प्रशिक्षण प्रशासनिक सुधार और लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 13 दिसम्बर, 1985

आदेश

का.आ. 5742.—केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का 25) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित अपराधों को उन अपराधों के रूप में विनिर्दिष्ट करती है जिनका अन्वेषण दिल्ली विशेष पुलिस स्थापन द्वारा किया जाएगा, अर्थात् :—

(क) भारतीय दण्ड संहिता, 1860 (1860 का 45) की धारा 469 के अधीन दण्डनीय अपराध; और

(ख) ऊपर उल्लिखित अपराधों और उन्हीं तथ्यों से उद्भूत होने वाले वैसे ही संव्यवहार के अनुक्रम में किए गए किसी अन्य अपराध के संबंध में या उनसे संसक्त प्रयत्न, दुष्प्रेरण और षड्यंत्र।

[सं. 228/29/85-ए.वी.डी. II]
एम. एस. प्रसाद, अवर सचिव

MINISTRY OF PERSONNEL & TRAINING, ADMN. REFORMS AND PUBLIC GRIEVANCES & PENSION
(Department of Personnel & Training)

New Delhi, the 13th December, 1985

ORDER

S.O. 5742.—In exercise of the poowers conferred by section 3 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government hereby specifies the following offences as offences which are to be investigated by the Delhi Special Police Establishment, namely :—

(a) Offences punishable under section 469 of the Indian Penal Code, 1860 (45 of 1860); and

(b) Attempts, abetments and conspiracies in relation to, or in connection with the offences mentioned above and any other offence committed in the course of the same transaction arising out of the same facts.

[No. 228/29/85-AVD. II]
M. S. PRASAD, Under Secy.

नई दिल्ली, 11 दिसम्बर, 1985

का.आ. 5743—राष्ट्रपति, संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, 1965 का और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, अर्थात् :—

1. (1) इन नियमों का संक्षिप्त नाम केन्द्रीय सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) संशोधन नियम, 1985 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. केन्द्रीय सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, 1965 की अनुसूची में, केन्द्रीय सिविल सेवा समूह ग (रक्षा सेवाओं में सिविलियनों के सिवाय) से संबंधित भाग 3 में, क्रम सं. 1 और 1क के सामने स्तंभ 4, 5 और 6 के नीचे की प्रविष्टियों में "1(ञ) केन्द्रीय जल और बिजली आयोग" कोष्ठकों, अक्षर और शब्दों और उनसे संबंधित प्रविष्टियों के पश्चात् क्रमशः निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

4	5	6
"(ञ) मुद्रण निदेशालय	संयुक्त निदेशक (i) से (iv) (प्रशासन)	सचिव, निर्माण और आवास मंत्रालय"

[सं. 11012/8/85-स्था. (क.)]
ए. जयरमन, निदेशक (स्था.)

New Delhi, the 11th December, 1985

S.O. 5743.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Central Civil Services (Classification, Control & Appeal) Rules, 1965, namely :—

1. (i) These rules may be called the Central Civil Services (Classification, Control & Appeal) Amendment Rules, 1985.

(ii) They shall come into force on the date of their publication in the Official Gazette.

2. In the Schedule to the Central Civil Services (Classification, Control & Appeal) Rules, 1965, in Part III relating to the Central Civil Services Group C (Except for Civilians in Defence Services), against Serial Numbers 1 and 1A in the entries under columns 4, 5 and 6 after the brackets, letter and words "(h) Central Water and Power Commission" and the entries relating thereto, the following shall be respectively inserted, namely :—

4	5	6
"(i) Directorate of Printing	Joint Director (i) to (iv) Administration	Secretary in the M/o Works & Housing"

[No. 11012/8/85-Estt.(A)]
A. JAYARAMAN, Director

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 1 नवम्बर, 1985

आयकर

का.आ 5744—आयकर अधिनियम, 1961 (1961 का 43) की धारा 2 के खंड (44) के उपखंड (iii) के अनुसरण में और भारत सरकार के राजस्व विभाग की दिनांक 14-10-85 की अधिसूचना सं. 6455/फा.सं. 398/29/84-आ.क. (ब.) का अधिलंघन करते हुए, उक्त अधिनियम के अन्तर्गत 29-6-1984 से कर वसूली अधिकारी की शक्तियों का प्रयोग करने के लिए केन्द्रीय सरकार के राजपत्रित अधिकारी श्री जार्ज ई.जे.डी. क्रूज को केन्द्रीय सरकार का भूतलक्षी प्रभाव से दिया गया प्राधिकार एतद्द्वारा सूचित किया जाता है।

[सं. 6485 (फा.सं. 398/29/84-आ.क. (ब.)]
बी०ई०अलैक्जेंडर, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 1st November, 1985

INCOME-TAX

S.O. 5744.—In pursuance of sub-clause (iii) of clause (44) of Section 2 of the Income-tax Act, 1961 (43 of 1961), and in supersession of the Government of India in the Department of Revenue's Notification No. 6455|F. No. 398|29|84-IT(B) dated 14-10-85 ex-post-facto authorisation of the Central Government is hereby conveyed to Shri George E. J. D'Cruz being a Gazette Officer of Central Government to exercise of the powers of a Tax Recovery Officer under the said Act from 29-6-84.

[No. 6485/F. No. 398/29/84-IT(B)]
B. E. ALEXANDER, Under Secy.

केन्द्रीय उत्पाद शुल्क और सीमा शुल्क बोर्ड

नई दिल्ली, 28 दिसम्बर, 1985

सं. 368/85-सीमा शुल्क

का. आ. 5745 :—केन्द्रीय उत्पाद-शुल्क और सीमा शुल्क बोर्ड, सीमा शुल्क अधिनियम, 1962 (1962 का 52) की धारा 9 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, आंध्र प्रदेश राज्य में, चित्तूर जिले के नागरी मांडलम में कील पट्टू और नागराजकुप्पम गांवों को, भाण्डागार स्टेशन घोषित करता है।

[फा. सं. 473/431/85-सीमा शुल्क 7]
आर. के. कपूर, अवर सचिव
केन्द्रीय उत्पाद शुल्क और सीमा शुल्क बोर्ड

CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi, the 28th December, 1985

NO. 368|85-CUSTOMS

S.O. 5745.—In exercise of the powers conferred by section 9 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby declares Villages Keelapattu and Nagarajakuppam in Nagari Mandalam of Chittoor District in the State of Andhra Pradesh to be warehousing stations.

[F. No. 473|431|85-CUS. VII]
R. K. KAPOOR, Under Secy.
CENTRAL BOARD OF EXCISE AND CUSTOMS

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 13 दिसम्बर, 1985

का.आ. 5746.—राष्ट्रीयकृत बैंक (प्रबन्ध एवं प्रकीर्ण उपबंध) स्कीम, 1970 की धारा 9 की उपधारा (2) के साथ पठित धारा 3 की उपधारा (ख) के अनुसरण में केन्द्रीय सरकार एतद्द्वारा श्री श्याम गोपाल दास, विशेष सहायक, यूनाइटेड कमर्शियल बैंक, प्रधान कार्यालय, कलकत्ता को दिनांक 13 दिसम्बर, 1985 से दिनांक 12 दिसम्बर, 1988 तक यूनाइटेड कमर्शियल बैंक के निदेशक मंडल में निदेशक के रूप में नियुक्त करती है।

[सं. एफ. 15/3/85-आई.आर.]
प्रवीण कुमार तेजयान, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 13th December, 1985

S.O.5746.—In pursuance of sub-clause (b) of clause 3, read with sub-clause (2) of clause 9 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government hereby appoints Shri Shyam Gopal Das, Special Assistant, United Commercial Bank, Head Office, Calcutta as a Director on the Board of Directors of United Commercial Bank with effect from 13th December, 1985 to 12th December, 1988.

[No. F. 15|3|85--IR]
P. K. TEJYAN, Under Secy.

नई दिल्ली, 10 दिसम्बर, 1985

का.आ. 5747—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उपधारा (1) के खंड (ग) के उपबन्धों के अनुसरण में भारतीय औद्योगिक विकास बैंक द्वारा नामित श्री एस.एस. नाडकर्णी, अध्यक्ष एवं प्रबन्ध निदेशक, भारतीय औद्योगिक विकास बैंक, बम्बई को एतद्द्वारा भारतीय निर्यात-आयात बैंक के निदेशक मण्डल में निदेशक के रूप में नियुक्त किया जाता है।

[सं. एफ. 7/8/85-बी.ओ.I]
एम.एस. सीतारामन, अवर सचिव

New Delhi, the 10th December, 1985

S.O. 5747.—In pursuance of the provision of clause (c) of sub-section (1) of section 6 of the Export-Import Bank of India Act, 1981 (28 of 1981), Shri S.S. Nadkarni, Chairman & Managing Director, Industrial Development Bank of India, Bombay nominated by Industrial Development Bank of India, is hereby appointed as a Director on the Board of Directors of Export-Import Bank of India.

[No. F. 7|8|85-BO. I]
M. S. SEETHARAMAN, Under Secy.

वाणिज्य मंत्रालय

(मुख्य नियंत्रक आयात-निर्यात का कार्यालय)

नई दिल्ली, 13 दिसम्बर, 1985

आदेश

का. आ. 5748.—मैसर्स भारत हैवी इलैक्ट्रिकल्स लि., भोपाल को फैंच क्रेडिट के अधीन और सार्वजनिक सूचना सं. 41/आई टी सी/पी एन/80, दिनांक 31-10-1980 में निर्धारित शर्तों के अनुसार हाइड्रोलिक से चलने वाली कॉयल स्प्रेडिंग मशीन के आयात के लिए 19,05,900/- रुपए (उन्नीस लाख पांच हजार नौ सौ रुपए मात्र) के लिए एक आयात लाइसेंस सं. आई/सी जी/2040924, दिनांक 9-5-1984 दिया गया था।

फर्म ने उपर्युक्त लाइसेंस की सीमाशुल्क प्रयोजन प्रति की अनुलिपि प्रति जारी करने के लिए इस आधार पर आवेदन किया है कि लाइसेंस की मूल सीमाशुल्क प्रयोजन प्रति खो गई है अथवा अस्थानस्थ हो गई है। आगे यह भी बताया गया है कि लाइसेंस की सीमा-शुल्क प्रयोजन प्रति किसी भी पत्तन प्राधिकारी के पास पंजीकृत नहीं की गई थी और इस प्रकार सीमाशुल्क प्रयोजन प्रति का मूल्य बिलकुल भी उपयोग में नहीं लाया गया है।

अपने तर्क के समर्थन में लाइसेंसधारी ने नोटेरी पब्लिक, भोपाल के सम्मुख विधिवत शपथ लेते हुए स्टाम्प कागज पर एक शपथ-पत्र दाखिल किया है। तदनुसार, मैं संतुष्ट हूं कि आयात लाइसेंस सं. आई/सी जी/2040924, दिनांक 9-5-1984 की मूल सीमाशुल्क प्रयोजन प्रति फर्म द्वारा खो गई है अथवा अस्थानस्थ हो गई है। यथा संशोधित आयात नियंत्रण आदेश, 1955, दिनांक 7-12-1955 की उपधारा 9(सी सी) के अधीन प्रदत्त अधिकारों का प्रयोग करते हुए मैसर्स भारत हैवी इलैक्ट्रिकल्स लि., भोपाल को जारी की गई उक्त मूल सीमाशुल्क प्रयोजन प्रति सं. आई/सी जी/2040924, दिनांक 9-5-1984 एतद्द्वारा रद्द की जाती है।

उपर्युक्त लाइसेंस की सीमाशुल्क प्रयोजन प्रति की अनुलिपि प्रति पार्टी को अलग से जारी की जा रही है।

[सं. सी.जी. II/एच.आई.-5/84-85/904]
पाल बैक, उपमुख्य नियंत्रक, आयात-निर्यात
कृते मुख्य नियंत्रण, आयात-निर्यात

MINISTRY OF COMMERCE

(Office of the Chief Controller of Imports & Exports)

New Delhi, the 13th December, 1985.

ORDER

S.O. 5748.—M|s. Bharat Heavy Electrical Ltd., Bhopal were granted an Import Licence No. I/CG/2040924 dated 9-5-84 for Rs. 19,05,900/- (Rupees Nineteen Lakhs five thousand and nine hundred only) for import of Hydraulically operated coil spreading machine under French Credit and in term of condition laid down in Public Notice No. 41|ITC|PN|80 dated 31-10-80.

The firm has applied for issue of Duplicate copy of Customs Purposes copy of the above mentioned licence on the ground that the original Customs purposes copy of the licence has been lost or misplaced. It has further been stated that the Customs Purposes copy of the licence was not registered with any Customs Authority and as such the value of Customs Purposes copy has not been utilised at all.

2. In support of their contention, the licensee has filed an affidavit on stamped paper duly sworn in before a Notary Public, Bhopal. I am accordingly satisfied that the original Customs Purposes copy of Import Licence No. I|CG|2040924 dated 9-5-84 has been lost or misplaced by the firm. In exercise of the powers conferred under sub-clause 9(cc) of the Import Control Order, 1955 dated 7-12-1955 as amended the said original Customs Purposes copy No. I|CG|2040924 dated 9-5-84 issued to M|s. Bharat Heavy Electricals Ltd., Bhopal is hereby cancelled.

3. A duplicate Customs Purposes copy of the said licence is being issued to the party separately.

[No. CG II|HI|5|84-85|904]
PAUL BECK, Dy. Chief Controller of Imports and Exports
for Chief Controler of Imports & Exports

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 13 दिसम्बर, 1985

का. आ. 5749.—यतः पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन भारत सरकार के पेट्रोलियम मंत्रालय की अधिसूचना का.आ.सं. 3485 तारीख 16-7-85 द्वारा केन्द्रीय सरकार ने उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग के अधिकार को पाइपलाइनों को बिछाने के लिए अर्जित करने का अपना आशय घोषित कर दिया था।

और यतः सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन सरकार को रिपोर्ट दे दी है।

और आगे, यतः केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है।

अब, अतः उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा घोषित करती है कि इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमियों में उपयोग का अधिकार पाइपलाइन बिछाने के प्रयोजन के लिए एतद्द्वारा अर्जित किया जाता है।

और आगे उस धारा की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निर्देश देती है कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की बजाय तेल और प्राकृतिक गैस आयोग में, सभी बाधाओं से मुक्त रूप में, घोषणा के प्रकाशन की इस तारीख को निहित होगा।

अनुसूची

एस.एन.एच. से संथाल जी.जी.एस.

राज्य : गुजरात जिला व तालुका : मेहसाना

गांव	सर्वे नं.	हेक्टेयर	आर.	सेंटी.
झुटाना	1246 1245	0	20	76
	1244	0	08	72
	1251	0	09	72
	1260	0	09	12
	1227	0	04	32

[सं. O 12016/89/85/ओ एन जी- डी- 4]
पी.के. राजगोपालन, डेस्क आफिसर

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 13th December, 1985

S.O. 5749.—Whereas by notification of the Government of India in the Ministry of Petroleum S.O. No. 3485 dated 16-7-85 under sub-section (1) of Section 3 of Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the right of user in the lands specified in the schedule appended to that notification for the purpose of laying pipeline;

And Whereas the Competent Authority has under Sub-Section (1) of Section 6 of the said Act, submitted report to the Government;

And further whereas the Central Government has, after considering the said report, decided to acquire the right of user in the lands specified in the schedule appended to this notification;

Now, therefore, in exercise of the power conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub-section (4) of that section, the Central Government directs that the right of user in the said lands shall instead of vesting in Central Government vests on this date of the publication of this declaration in the Oil & Natural Gas Commission free from encumbrances.

SCHEDULE

Pipeline from SNH to Santhal GGS

State : Gujarat District & Taluka : Mehsana

Village	Survey No.	Hect-are	Are	Centi-are
1	2	3	4	5
Jotana	1246 1245	0	20	65
	1244	0	08	72
	1251	0	09	72
	1260	0	09	12
	1227	0	04	32

[No. O-12016/89/85-ONG-D-4]
P. K. RAJAGOPALAN, Desk Officer

मानव संसाधन विकास मंत्रालय

(संस्कृति विभाग)

नई दिल्ली, 11 दिसम्बर, 1985

शुद्धिपत्र

का आ. 5750—जी.एस.आर.सं. 865 द्वारा दिनांक 14-9-1985 को समाप्त होने वाले सप्ताह के लिए राजपत्र के पृष्ठ 2262-63 में प्रकाशित इस विभाग के समसंख्यक अधिसूचना दिनांक 21 अगस्त, 1985 में निम्नलिखित संशोधन किए जाएं :—

के स्थान पर	पढ़ा जाए
1. डा. ए.के. जलालुद्दीन निदेशक साक्षरता सदन लखनऊ	डा. ए.के. लालुद्दीन, संयुक्त निदेशक, राष्ट्रीय शैक्षिक अनुसंधान और प्रशिक्षण परिषद, नई दिल्ली।
2. डा. सुरजीत सिन्हा, निदेशक, कलकत्ता सामाजिक विज्ञान स्कूल, 10, लेक टेरेन्स, कलकत्ता।	डा. सुरजीत सिन्हा निदेशक, सामाजिक विज्ञान अध्ययन केन्द्र, 10, लेक टेरेन्स कलकत्ता।
3. प्रोफेसर के.ए. इसाक, केरल विश्वविद्यालय त्रिवेन्द्रम	प्रोफेसर के.ए. इसाक, 17-24, जगाथी, त्रिवेन्द्रम
4. श्री सुरेश दलाल गुजरात के प्रोफेसर बम्बई विश्वविद्यालय बम्बई।	श्री सुरेश दलाल, निदेशक, एस एन डी टी महिला विश्वविद्यालय, स्नातकोत्तर अध्ययन और अनुसंधान विभाग, पत्थरे हाल भवन, 1, नेथीबाई थैकरसेई रोड, बम्बई-400029

1	2
5. प्रोफेसर दास कुलपति, सम्बलपुर विश्वविद्यालय सम्बलपुर (उड़ीसा)	प्रोफेसर आर.सी. दास कुलपति बरहामपुर विश्वविद्यालय, बरहामपुर (उड़ीसा)
7. प्रोफेसर चोपड़ा समकुलपति पंजाब विश्वविद्यालय पटियाला	प्रोफेसर एस.आर.के. चोपड़ा सकुलपति पंजाबी विश्वविद्यालय पटियाला।

[सं. एफ. 27-5/85-पुस्त.]
आर.सी. सूद, अवर सचिव

MINISTRY OF HUMAN DEVELOPMENT RESOURCES
(Department of Culture)

New Delhi, the 11th December, 1985

CORRIGENDUM

S.O. 5750.– The following corrections may kindly be made in this department's notification of even number dated the 21st August, 1985 published in the Gazette at pp. 2262-63 for the week ending 14-9-1985 vide GSR No. 865 :—

For	Read as
(i) Dr. A.K. Jallaluddin, Director,	Dr. A.K. Jalaluddin, Joint Director,
Literacy House, Lucknow.	National Council of Educational Research and Training, New Delhi.
(ii) Dr. Surjit Sinha, Director, Calcutta School of Social Sciences, 10, Lake Terrance, Calcutta.	Dr. Surjit Sinha, Director, Centre for Studies in Social Sciences, 10, Lake Terrance, Calcutta.
(iii) Prof. K.A. Issac, University of Kerala, Trivandrum.	Prof. K.A. Issac, 17—24 Jagathy, Trivandrum-14.
(v) Shri Suresh Dalal, Professor of Gujarati, Bombay University, Bombay.	Shri Suresh Dala Director, SNDT Women's University Department of Post Graduate Studies & Research, Patkar Hall Building, 1, Nathibai Thackersey Road, Bombay-400020.
(vi) Prof. Das Vice-Chancellor Sambalpur University, Sambalpur (Orissa).	Prof. R.C. Das, Vice-Chancellor, Berhampur University, Berhampur (Orissa).
(vi) Prof. Chopra, Pro-Vice-Chancellor, Punjabi University, Patiala.	Prof. S.R.K. Chopra, Pro-Vice-Chancellor, Punjabi University, Patiala.

[No. F. 27—5/85-Lib.]
R. C. SOOD, Under Secy.

संस्कृति विभाग

भारतीय पुरातत्व सर्वेक्षण

नई दिल्ली, 13 दिसम्बर, 1985

(पुरातत्व)

का० आ० 5751.—केन्द्रीय सरकार की यह राय है कि इससे उपाबद्ध अनुसूची में विनिर्दिष्ट प्राचीन संस्मारक राष्ट्रीय महत्व के हैं,

अतः, अब केन्द्रीय सरकार, प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, 1958 (1958 का 24) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त प्राचीन संस्मारक को राष्ट्रीय महत्व का घोषित करने के अपने आशय की सूचना देती है,

ऐसे आक्षेप पर, जो इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से दो मास की अवधि के भीतर उक्त प्राचीन संस्मारक में हितबद्ध किसी व्यक्ति से प्राप्त होगा, केन्द्रीय सरकार विचार करेगी।

अनुसूची

राज्य	जिला	तहसील	अवस्थान	संस्मारक का नाम	संरक्षण के अधीन सम्मिलित किए जाने वाले राजस्व प्लाट संख्यांक	क्षेत्र
1	2	3	4	6		7
पश्चिम	पश्चिम जिला	झुन्झुनू ब्लाक	खियोचोड पाम्परी	झुन्झुनू मठ	सर्वेक्षण प्लाट सं 52	0.1840 हैक्टर

सीमाएं (8)	स्वामित्व (9)	टिप्पण (10)
उत्तर- सर्वेक्षण प्लाट सं 53 पूर्वी- सर्वेक्षण प्लाट सं 50 और 51 दक्षिण- सर्वेक्षण प्लाट सं 51 पश्चिम- सर्वेक्षण प्लाट सं. 55	मठ	

[सं. 2/37/84-एम.]

DEPARTMENT OF CULTURE

ARCHAEOLOGICAL SURVEY OF INDIA

New Delhi, the 13th Dec. 1985.

(ARCHAEOLOGY)

S.O. 5751:—Whereas the Central Government is of the opinion that the ancient monument specified in the Schedule annexed hereto is of national importance;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Ancient monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby gives notice of its intention to declare the said ancient monument to be of national importance.

Any objection which may be received within a period of two months' from the date of issue of this notification in the Official Gazette from any person interested in the said ancient monument will be taken into consideration by the Central Government.

SCHEDULE

State	District	Tehsil/ Block	Locality	Name of monument	Revenue plot numbers to be included under protection	Area	Boundaries	Owner-ship	Remarks
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
Sikkim	West District	Dubdi Block	Kheochod Phalni	Dubdi Monastery	Survey plot No. 52	0.1840 Hectare	North- Survey Plot No. 53 East.- Survey plot Nos. 50 and 51 South.- Survey plot No. 51 West.- Survey plot No. 55	Monastry	

[No. 2/37/84-M]

का.आ. 5752.—केन्द्रीय सरकार की यह राय है कि इससे उपाबद्ध अनुसूची में विनिर्दिष्ट प्राचीन संस्मारक राष्ट्रीय महत्व के हैं,

अतः अब, केन्द्रीय सरकार, प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, 1958 (1958 का 24) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त प्राचीन संस्मारक को राष्ट्रीय महत्व का घोषित करने के अपने आशय की सूचना देती है ।

ऐसे आक्षेप पर, जो इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से दो मास की अवधि के भीतर उक्त प्राचीन संस्मारक में हितबद्ध किसी व्यक्ति से प्राप्त होगा, केन्द्रीय सरकार विचार करेगी ।

अनुसूची

राज्य	जिला	तहसील	अवस्थान	संस्मारक का नाम	संरक्षण के अधीन सम्मिलित किए जाने वाले राजस्व प्लाट संख्यांक	क्षेत्र
1	2	3	4	5	6	7
सिक्किम	पश्चिम जिला	--	पेमायोंगत्से मठ सम्पदा का वन क्षेत्र	सिक्किम की प्राचीन राजधानी का रेबडेनत्से स्थल	असर्वेक्षित क्षेत्र	--

सीमाएं	स्वामित्व	टिप्पण
(8)	(9)	(10)
--	--	यह स्थल पेमायोंगत्से मठ संपदा के वन क्षेत्र के भीतर स्थित है और असर्वेक्षित क्षेत्र है ।

[सं० 2/37/84-एम०]

S.O. 5752:—Whereas the Central Government is of the opinion that the ancient site specified in the Schedule annexed hereto is of national importance;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby gives notice of its intention to declare the said ancient site to be of national importance.

Any objection which may be received within a period of two months from the date of issue of this notification in the Official Gazette from any person interested in the said ancient site will be taken into consideration by the Central Government.

SCHEDULE

State	District	Tehsil/ Block	Locality	Name of site	Revenue plot numbers to be included under protection	Area	Boundaries	Ownership	Ramank
1	2	3	4	5	6	7	8	9	10
Sikkim	West District	—	Forest Area of Pemayongtse Monastery estate	Rabdentse site of ancient capital of Sikkim	Unsurveyed Area	—	—	—	The site is located within the Forest area of the Pemayongtse Monastery Estate and is unsurveyed Area

[No. 2/37/84-M]

का.आ. 5753—केन्द्रीय सरकार की यह राय है कि इससे उपाबद्ध अनुसूची में विनिर्दिष्ट प्राचीन संस्मारक राष्ट्रीय महत्व के हैं;

अतः अब, केन्द्रीय सरकार प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, 1958 (1958 का 24) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त प्राचीन संस्मारक को राष्ट्रीय महत्व का घोषित करने के अपने आशय की सूचना देती है।

ऐसे आक्षेप पर, जो इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से दो मास की अवधि के भीतर उक्त प्राचीन संस्मारक में हितबद्ध किसी व्यक्ति से प्राप्त होगा, केन्द्रीय सरकार विचार करेगी।

अनुसूची

राज्य	जिला	तहसील	अवस्थान	संस्मारक का नाम	संरक्षण के अधीन सम्मिलित किए जाने वाले राजस्व प्लाट संख्यांक	क्षेत्र
1	2	3	4	5	6	7
सिक्किम	पश्चिम जिला	युकसाम	खियोबोड़ पालरी	चुकसाम के निकट नर्वगाग का राज्याभिषेक सिंहासन	सर्वेक्षण प्लाट सं 330	1.2620 हैक्टर

सीमाएं	स्वामित्व	टिप्पण
(8)	(9)	(10)
उत्तर—सर्वेक्षण प्लाट सं 271 और 321 पूर्व—सर्वेक्षण प्लाट सं 322 दक्षिण—सर्वेक्षण प्लाट सं 328, 332, 341 और 342 पश्चिम—सर्वेक्षण प्लाट सं 268 और 270	वन आरक्षित सरकारी भूमि	—

[सं. 2/37/84-एम०]

एम.एस. नागराजाराव, महानिदेशक और संयुक्त सचिव पदेन

S.O. 5753 :—Whereas the Central Government is of the opinion that the ancient monument specified in the Schedule annexed hereto is of national importance;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Ancient Mounments and Archaeological Sites and Remains Act, 1958 (24 to 1958), the Central Government hereby gives notice of its intention to declare the said ancient monument to be of national importance.

Any objection which may be received within a period of two months' from the date of issue of this notification in the Official Gazette from any person interested in the said ancient monument will be taken into consideration by the Central Government.

SCHEDULE

State	District	Tehsil/ Block	Locality	Name of monument	Revenue plot numbers to be included under protection	Area	Boundaries	Ownership	Remarks
1	2	3	4	5	6	7	8	9	10
Sikkim	West District	Yuksam	Khoochodphahi	Coronation Throne of Norbugang near Yuksam	Survey plot No. 330	1.2620 Hectare	North.- Survey plot Nos. 271 and 321 East.- Survey plot No.- 322 South.- Survey plot Nos. 328, 332, 341 and 342 West.- Survey Nos. 268 and 270	Forest reserved Government land.	—

[No. 2/37/84-M]

M.S. NAGARAJA RAO, Director General and Ex-Officio Jt. Secy.

खाद्य और नागरिक पूर्ति मंत्रालय

(नागरिक पूर्ति विभाग)

भारतीय मानक संस्था

नई दिल्ली, 9 दिसम्बर, 1985

का०आ० 5754.—समय समय पर संशोधित भारतीय मानक संस्था (प्रमाणन चिन्ह) विनियम, 1955 के विनियम 14 के उपविनियम (4) के अनुसार अधिसूचित किया जाता है कि लाइसेंस संख्या सी एम एल-1028734 जिसके ब्यौरे नीचे अनुसूची में दिए गए हैं 84-08-29 से रद्द कर दिया गया है क्योंकि फर्म लाइसेंस को नहीं रखना चाहती है ।

अनुसूची

क्रम सं	लाइसेंस की संख्या और दिनांक	लाइसेंसधारी का नाम और पता	रद्द किए गए लाइसेंस के अधीन वस्तु प्रक्रिया	सम्बद्ध भारतीय मानक
(1)	(2)	(3)	(4)	(5)
1.	सी एम/एल-1028734 1082-01-27	मैसर्स नेशनल आयरन एवं स्टील कं लि० बेलूर प्रो०आ० बेलूर मठ (हावड़ा) (प० बंगाल)	संरचना इस्पात (साधारण किस्म)	IS : 1977-1975 संरचना इस्पात (साधारण किस्म) की विशिष्टि (दूसरा पुनरीक्षण)

[सी एम डी 55 : 1028734]

बी०एन० सिंह, अपर महानिदेशक

MINISTRY OF FOOD & CIVIL SUPPLIES

(Department of Civil Supplies)

INDIAN STANDARDS INSTITUTION

New Delhi, the 9th December, 1985

S.O. 5754:— In pursuance of sub-regulation (4) of regulation 14 of the Indian Standards Institution (Certification Marks), Regulation 1955 as amended from time to time, the Indian Standards Institution hereby notifies that licence No. CM/L-1028734 particulars of which are given in the Schedule below has been cancelled with effect from 84-08-29 as the firm is not interested to operate the licence.

THE SCHEDULE

Sl. No.	Licence No. and Date	Name & Address of the Licensee	Article/Process Covered by the Licence Cancelled	Relevant Indian Standards
(1)	(2)	(3)	(4)	(5)
1	CM/L-1028734 1982-01-27	M/s National Iron & Steel Co. Ltd. Belur, P.O. Balurmath, Howrah (W.B.)	Structural Steel (Ordinary Quality)	IS: 1977-1975 Specification for structural steel (Ordinary Quality) (second revision)

[CMD/55 : 1028734]
B. N. SINGH, Additional Director General, ISI

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 6 दिसम्बर, 1985

का.आ. 5755:—यतः भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उप-धारा (1) के खण्ड (ङ) का अनुसरण करते हुए केन्द्रीय सरकार ने लेफ्टिनेंट जनरल ए. आर. सुब्रामनियन, महानिदेशक, सशस्त्र सेना चिकित्सा सेवा, नई दिल्ली को (पदनाम द्वारा) भारतीय आयुर्विज्ञान परिषद् का सदस्य मनोनीत किया है;

और यतः लेफ्टिनेंट जनरल ए. आर. सुब्रामनियन की सेवा निवृत्ति के परिणामस्वरूप लेफ्टिनेंट जनरल एच. सी. पुरी ने सशस्त्र सेना चिकित्सा सेवा, नई दिल्ली के महानिदेशक के रूप में कार्यभार संभाल लिया है,

अतः अब उक्त अधिनियम की धारा 3 की उप-धारा (1) के अनुसरण में केन्द्रीय सरकार एतद्द्वारा पूर्ववर्ती स्वास्थ्य मंत्रालय की 9 जनवरी, 1960 की अधिसूचना संख्या 5-13/59 एम. आई. (का. आ. 138) में निम्नलिखित और संशोधन करती है, अर्थात्:—

उक्त अधिसूचना की "धारा 3 की उप-धारा (1) के खण्ड (ङ) के अधीन मनोनीत" शीर्ष के अन्तर्गत क्रम संख्या 4 के सामने जो प्रविष्टि है उसमें "लेफ्टिनेंट जनरल ए. आर. सुब्रामनियन शब्दों और अक्षरों के स्थान पर "लेफ्टिनेंट जनरल एच. सी. पुरी" शब्द और अक्षर रखे जाएंगे।

[सं. एच. 11013/18/84-एम. ई. (पी)]
चन्द्रभान, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 6th December, 1985

S.O. 5755.—Whereas the Central Government has in pursuance of clause (e) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956), nominated Lt. Gen. A.R. Subramanian, Director General, Armed Forces Medical Services, New Delhi (by designation) as a member of the Medical Council of India;

And Whereas consequent on the retirement of Lt. Gen. A.R. Subramanian, Lt. General H.C. Puri has taken over as the Director General, Armed Forces Medical Services New Delhi;

Now, therefore, in pursuance of sub-section (1) of section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the late Ministry of Health No. 5-13/59-MI (S.O. 138), dated the 9th January, 1960, namely :—

In the said notification, under the heading "Nominated under clause (e) of sub-section (1) of section 3",

in the entry against serial number 4, for the words and letters "Lt. General A. R. Subramanian", the words and letters "Lt. Gen. H. C. Puri" shall be substituted.

[No. H. 11013/18/84-ME (P)]
CHANDER BHAN, Under Secy.

परिवहन मंत्रालय

(नागर विमानन विभाग)

नई दिल्ली, 9 दिसम्बर, 1985

का.आ. 5756:—भारत अन्तर्राष्ट्रीय विमानपत्तन प्राधिकरण अधिनियम, 1971 (1971 का 43) के खंड 3 के उप-खंड 3 द्वारा प्रदत्त शक्तियों का उपयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा भारतीय वायु सेना के सहायक वायु सेना अध्यक्ष (परिचालन) एयर वाइस मार्शल पृथी सिंह, ए. वी. एस. एम. वी. एस. एम. एण्ड बार को तत्काल से 20-12-1986 तक, पदेन आधार पर, एयर वाइस मार्शल एस. के. मेहरा के स्थान पर, भारत अन्तर्राष्ट्रीय विमानपत्तन प्राधिकरण के निदेशक-मंडल में अंश कालिक सदस्य नियुक्त करते है।

[सं. एवी-24027/1/85-ए ए (वित्त-2)]
एस. सी. कोहली, वित्त नियंत्रक

MINISTRY OF TRANSPORT

(Department of Civil Aviation)

New Delhi, the 9th December, 1985.

S.O. 5756.—In exercise of the powers conferred by sub-section 3 of Section 3 of the International Airports Authority Act, 1971 (43 of 1971), the Central Government hereby appoint Air Vice Marshal Prithi Singh, AVSM VM &Bar, Assistant Chief of Air Staff (Operations), Indian Air Force as a part-time Member on the Board of International Airports Authority of India vice Air Vice Marshal S.K. Mehra, with immediate effect on ex-officio basis upto 20-12-1986.

[No. AV. 24027/1/85-AA (F. II)]
S. C. KOHLI, Financial Controller

(जल, भूतल परिवहन विभाग)

(नौवहन पक्ष)

नई दिल्ली, 11 दिसम्बर, 1985

का.आ. 5757:—केन्द्रीय सरकार नाविकों के निर्वाह निधि योजना, 1966 के पैरा 3 के साथ पठित नाविकों के निर्वाह निधि अधिनियम, 1966 (1966 का 4) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और नौवहन और परिवहन मंत्रालय (परिवहन पक्ष) की अधिसूचना जिसका प्रकाशन भारत के राजपत्र में का. आ. संख्या 616 दिनांक 19-2-1977 को हुआ था, उसका अधिक्रमण करते हुए एतद्द्वारा निम्नलिखित व्यक्तियों को उक्त अधिनियम के अंतर्गत गठित नाविकों के निर्वाह

निधि के न्यासियो के बोर्ड के अध्यक्ष तथा सदस्य नियुक्त करती है, अर्थात् –

अध्यक्ष

नौवहन महानिदेशक, बम्बई

सदस्य

1 सरकारी अधिकारी

1 निदेशक/उप सचिव, भारत सरकार परिवहन मत्रालय जल, भूतल परिवहन विभाग, नाविको के कल्याण से सबधित।	सरकारी प्रतिनिधि
2 वित्तीय नियत्रक, परिवहन मत्रालय, जल, भतल परिवहन विभाग	—यथोक्त—
3 नौवहन उप महानिदेशक नाविक कल्याण से सबधित	—यथोक्त—

नियोजको के प्रतिनिध

4 अध्यक्ष, स्वामी/एजेन्ट्स कमेटी (कर्मीदल) बबई	पोत स्वामियो के प्रतिनिधि।
5 अध्यक्ष कलकत्ता लाइनर्स सम्मेलन (कर्मीदल) कलकत्ता	—यथोक्त—
6 श्री टी एस नारायण, भारतीय राष्ट्रीय पोत स्वामियो की सस्था के प्रतिनिधि	—यथोक्त—

कर्मचारियो के प्रतिनिधि

7 श्री लियो बारनेस, नेशनल यूनियन आफ सीफेयरर्सस आफ इडिया बबई	नाविको के प्रतिनिधि
8 श्री यू एम एलमोडा, नेशनल यूनियन आफ सीफेयरर्स आफ इडिया बबई	—यथोक्त—
9 श्री एम ए सईद, फारवर्ड सीमेन्स यूनियन आफ इडिया कलकत्ता	—यथोक्त—

[फा स एस डब्ल्यू/एम डब्ल्यू एस-30/8 :–एम टी]
एस सिवल अवर सचिव

(Department of Surface Transport)

(Shipping Wing)

New Delhi, the 11th December, 1985

S O. 5757 —In exercise of the powers conferred, by section 5 of the Seamen's Provident Fund Act, 1966 (4 of 1966), read with paragraph 3 of the Seamen's Provident Fund Scheme, 1966, and in supersession of the Ministry of Shipping and Transport (Transport Wing) notificationp ublished in the Gazette of India vide S O No 616 dated 19-2-1977, the Central Government hereby appoints the following persons as the Chairman and members of the Board of Trustees of the Seamen's Provident Fund constituted under the said Act, namely —

CHAIRMAN :

The Director General of Shipping, Bombay

MEMBERS

Government officials :

(1) Director/Deputy Secretary, Ministry of Transport, Department of Surface Transport—Dealing with Seamen's Welfare	Government Representative
(2) Controller of Accounts, Ministry of Transport, Department of Surface Transport	-do-
(3) Deputy Director General of Shipping dealing with Seamen's welfare	Government Representative

Employers representatives

(4) The Chairman, Owners/Agents Committee (Crews), Bombay	Shipowner's Representative
(5) The Chairman Calcutta Liners' Conference (Crews) Calcutta	-do-
(6) Shri T S Narayan representing Indian National Shipowners Association	-do-

Employees' representatives

(7) Dr Leo Pereira, National Union of Seafarers of India, Bombay	Seamen's Representative
(8) Shri U M Almeida, National Union of Seafarers of India, Bombay	-do-
(9) Shri M A Sayeed, Forward Seamen's Union of India, Calcutta	-do-

[File No SW/MWS/30/82-MT]
S SYNGHAL, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 16 दिसम्बर, 1985

का आ 5758 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण मे केन्द्रीय सरकार, भारतीय स्टेट बैंक, वाराणसी, के प्रबधतत्र से सम्बद्ध नियोजको और उनके कर्मकारो के बीच, अनुबध मे निर्दिष्ट औद्योगिक विवाद मे केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-12-85 प्राप्त हुआ था।

MINISTRY OF LABOUR

New Delhi, the 16th December, 1985

S O —In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the State Bank of India Varanasi and their workmen, which was received by the Central Government on the 2nd December, 1985

BEFORE SHRI P B SRIVASTVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Reference No L-12012/269/83/D II(A) dated 13-3-1984

Industrial Dispute No 25/1984

In the matter of dispute between

Shri J N Dixit, C/o Shri N C Pande, C-323, Guruteg Bahadur Marg, Kareli, Allahabad

AND

The Regional Manager, State Bank of India, Regional Office, Varanasi

PRESENT

Shri O P Nigam —for the workman
Shri Mahesh Chandra—for Management

AWARD

1 The Central Government, Ministry of Labour vide its notification No L-12012/269/83/D-II(A) dated 13th March, 1984, has referred the following dispute for adjudication

Whether the action of the management of State Bank of India, Region III Varanasi in discharging Shri J. N. Dixit Dy. Head Cashier, State Bank of India, Azamgarh w.e.f. 26th April, 1983 is fair just and legal ? If not, to what relief is the concerned workman entitled ?

2. It is common ground that the applicant was working as Deputy Head Cashier in the management bank branch at Azamgarh from 22nd September, 1980 and his services were terminated w.e.f. 26th April, 1983. The termination order of the workman reads as follows :

It has been decided to terminate your service in the bank in terms of para 522(1) of Sastri Award, accordingly your services in the bank are hereby terminated with immediate effect. A Cheque for three months salary was enclosed with the order in lieu of notice of three months salary for termination.

3. Further a cheque towards retrenchment compensation was enclosed. The management averred in their written statement that the discharge passed against the workman was based on the ground of loss of confidence of the bank management which was passed by the competent authority after due consideration thereof. The workman contended that he was an active office bearer of the trade union of employees in the bank and hence was an eye sole and it was on that count that he was ousted from the bank services. The workman has contended that the management has contravened the provision of section 25G and H of the Industrial Dispute Act and also the provision contained in the Sastri Award. The applicant was appointed by Dy. Secretary and Treasurer of the Bank and as such the Regional Manager who terminated his services being junior in rank could not terminate his services and that the termination of the workman under para 522(i) of Sastri Award without assigning any reason and not allowing the applicant full chance to defend himself is also illegal and viod abinitio.

4. The management in its written statement has averred that the Regional Manager being the controlling authority of the branch office have been notified and declared as disciplinary authority as well as manager for the purposes of taking disciplinary proceedings and passing final orders and hence Shri R. C. Gupta, Regional Manager was the competent authority to terminate his services. That under the law the employer is empowered to take disciplinary action for misconducts as well as to terminate the services of the workman by way of simple discharge and it is open to the management to opt for any of the two alternatives and proceed against the employee. The management in its written statement came out that the ground for discharge was as under :

On 18th February, 1980 the workman took a loan for Rs. 4000 for purchase of a Motor Cycle which was to be utilised within a month by purchase of the same and he was required to execute a hypothecation bond for the purchased motor cycle.

The workman did nothing and after repeated reminders produced a photo copy of the document purporting to be a sale letter evidencing purchase of a Motor Cycle with registration no. UPE 1252, for Rs. 5,000 from one Shri Virendra Bahadur Rai alongwith photo copy of a transfer sale letter of ownership. Despite letters and reminders on 18th October, and 6th November, the workman did not submit originals. On further enquiries from Shri Virendra Bahadur Rai who was posted as Munsif Magistrate Badaun vide letter dated 12th December, 1982, mentioned that he had never sold his motor cycle and his signature on the sale documents were forged, which on comparision not found genuine. Further two government bills pertaining to home department, one for Rs. 12362 and the other for Rs. 36172 were fradulantly paid to one Shri Bir Bahadur Singh. On a comparison of the signature of Shri Virendra Bahadur Rai on the sale letter of the motor cycle and the signature of Bir Bahadur Singh found on the two government bills were found to be written by one and same person which clearly indicated involvement of the workman in fradulent payment of the two government bills. In these circumstances, the Regional Manager being competent authority to pass orders of discharge against the workman, held the view that the workman who was holding a position of trust and confidence was a person in whom no confidence could be reposed in and was not a fit person to be retained in banks service. Accordingly, he ordered discharge of the workman under para 522(i) of the Sastri Award, on payment of three months pay in lieu of notice. They discharged on the ground of loss of confidence which not amounted to retrenchment. Yet by way of abondent caution he had been paid retrenchment compensation.

5. It is argued on behalf of the management that the present discharge of the workman is for loss of confidence and not with stigma attached and not with a punishment attached and he has been discharged simpliciter under para 522(1) of the Sastri Award and thus is free to take service any where else though there were materials for loss of confidence and the management could have taken disciplinary proceedings against the workman and terminated his services for gross misconduct. Thus for loss of confidence there were grounds which were not made a subject matter of the enquiry and which remained only a subjective satisfaction of the management and the same is not open for judicial scrutiny.

6. In support of his contention the management representative has referred me the case law reported in case State of Uttar Pradesh Versus Ram Chandra Trivedi 1976 S. C. Cases page 52 wherein it was held thus ;

We, therefore, agree with the submissions made on behalf of the appellant that the High Court was in error in relying part findings that the impugned order is passed by way of punishment by proving into the departmental course that based between the superiors of the respondent very lacking observation made by this court in I. N. Saxena Vs. State of Madhya Pradesh that when there are no express words in the impugned order itself are thereby stegima on the government servant the court would not delve into secretariate files to discover whether some count of stegima could be inferred on research.

7. The above case was a case under article 311(2) of Indian Constitution, here case is of the management's loss of confidence. Shri Virendra Bahadur Rai vide his letter dated 12th December, 1982 denied the execution of any sale letter to the workman. Loss of confidence is that the employee has failed to behave upto the expected standard of conduct which has given rise to a situation involving loss of confidence.

8. The representative for the management has further argued that there was no legal bar for the management not to terminate the service of a workman for loss of confidence if the management is really shaken. To substantiate management's subjective satisfaction, the management drew my attention that the workman took a loan of Rs. 4000 for the purchase of Motor Cycle and for satisfaction of the management produced photo copy of a sale letter dated 21st February, 1980 purporting that a particular motor cycle was sold by one Virendra Bahadur Rai who was none else than Munsif Magistrate. On good deal of enquiry for the original sale letter and hypothecation bond and subsequent enquiry from the seller Shri Virendra Bahadur Rai who was none else but a Munsif Magistrate denied the execution of any sale deed of motor cycle vide his letter dated 12th December, 1982. Real Brother of Shri Rai namely Shri R. B. Rai was also a Munsif Magistrate at Basti. The workman has filed Annexure 7 and 8 along with his affidavit evidence dated 27th September, 1982 which was allegedly written by Shri Virendra Bahadur Rai to the R.T.O. Azamgarh admitting sale of his motor cycle to Shri J. N. Dixit and that he had no objection if the vehicle is transferred in his name. The signatures of Virendra Bahadur Rai was attested by his real brother under seal of the court. On that very day he wrote a letter to one Hira in which he mentions as follows :

Please arrange to note that any enquiry relating to sale of motor cycle in the name of Shri J. N. Dixit should be verified.

These two letters were admittedly given by Shri R. B. Rai Munsif Magistrate to the workman. Annexure 6 shows that the workman had obtained temporary possession of the vehicle No. UPE 1262 on 23rd September, 1981 and had paid road tax till 30-11-81. Just before signatures attestafien on annexure 7 on 27-9-82, on 4-9-82 two government bills one amounting to Rs. 36175 and the other for Rs. 12362 were paid to one Bir Bahadur Singh which signatures turned out to be a forgery. The management getting suspicious obtained hand writing expert's opinion if signatures of Bir

Bahadur Rai on annexure 7 and the photo copy of sale letter dt. 20-2-80 paper no. 14 of the management document filed obtained report from the hand writing expert that the writer of the two was one and same person. It was after this report of the hand writing expert on 24-10-82 that the management representative Shri S. P. Gaur approached Shri Virendra Bahadur Rai who in his term wrote the letter in his writing dt. 12-12-82 denying any execution of the letter of sale of the motor cycle. This caused maximum of suspicion in the mind of the management as consequence of which services of the workman were terminated vide order dated 26-4-83. Thus the termination of the workman on ground of suspicion that the workman is at any how involved with the monitory loss to the bank and who himself duped the bank for some time and it was on that count that the management loosed confidence in him and instead of charge sheeting and holding any enquiry terminated his services simplicitor under para 522(1) of Shastri Award. Thus the termination was with stegima attached that either he himself forged signatures or get it done and in that case it is argued that he should have been charge sheeted and services terminated only after an enquiry it found guilty of gross misconduct.

9. It is argued on behalf of the workman that loss of confidence means that the employee has failed to behave upto the expected standard of conduct which has shaken the confidence of the management giving rise to a situation involving loss of confidence. The management should show as to what was the expected standard behaviour or conduct which the workman failed to show giving rise to loss of confidence. If forgery has been committed by some one incurring wrongful payment to one Shri Bir Bahadur Singh, it can not be said that the workman did not know it or knowingly get it done by some one, in the absence of cogent proof moreover, no conduct has been shown from which failure of expected behaviour could have been inferred. The management should have got enquiry done to establish that the employee had failed to behave upto the expected standard of conduct which had given rise to a situation involving loss of confidence. Thus as in the back ground the termination was with a stegima attached, the termination of the workman is illegal in the absence of any enquiry and proof thereof against the workman. In support of his contention the representative for the workman has drawn my attention to the law laid down in the case Chandu Lal Vs. Management of PAN Americal World Airways 1985 lab IC page 1225 wherein it was held thus.

> Where the services of a workman were terminated on acconut that the workman was being involved in an act of smuggling, on basis of loss of confidence, without holding any domestic enquiry the order of terminated was vatiated as it did amount to be one with stegima and warranted a proceding comtemplated by law preceding termination.

10. The workman in his cross examination admitted that he has purchased the motor cycle from Shri Virendra Bahadur Rai, Munsif Magistrate, who was resident of Azamgarh and that he purchased the same at Azamgarh. He further admitted that Shri S. P. Gaur (who contacted Shri Virendra Bahadur Rai letter dated 12-12-82, denying execution of sale letter by him). was an officer of the Bank at Azamgarh. He has further admitted that he had gone to Basti to obtain attestation of the signatures of Shri Virendra Bahadur Rai by his brother Shri R B Rai as at that time Shri Virendra Bahadur Rai was posted at Badaun. He further stated that signature of Shri Virendra Bahadur Rai attested by his brother Shri RB Rai was got done, thus it was not proper on the part of Shri R. B. Rai Munsif Magistrate to have attested the signatures. Utmost he done it on the basis of his personal acquaintance of his brother's signatures. The workman admitted that he know both brothers from their student days. In this circumstances it may be that on account of his common acquintance from student day's that he got the attestation done from Shri R. B. Rai about his brothers signatures which his brother denied to have executed by letter dated 12-12-82 Further he admits that Shri R. B. Rai has given him the letter filed by him with the affidavit to be given at his house. If the letter was to be given at the house of Shri R B Rai at Azamgarh there was no occassion for the workman to obtain its photo copy and to file the same in the court. All these ground did raise the suspicion about the involvement the workman and in these circumstances, terminating his services under para 522'1' of the Shastri Award would be nothing but attached with the stigma that either he himself was a forger or get the forgery done to his knowledge and for this there should have been a clear charge sheet and the services would have been terminated only after the proof of the same.

11. The workman representative has further referred me the ruling Workman of Hindustan Steel Limited and another Versus Hindustan Steel Limited and others 1985 I LLJ page 267 Supreme Court, wherein it was held thus;

> Standing Order 32 no where obligates the general manager to record reasons for dispensing with the enquiry as prescribed by standing order 31. On the contrary standing order 32 enjoins a duty upon the General Manager to record reasons for is satisfaction why it was in expedient or against the interest of the security of the state to continue to employ the workman, reasons for dispensing with the enquiry and reasons for not continuing to employ should the workman stand wholly apart from each other. A standing order which confers such arbitrary, uncanalised and drastic power to dismiss an employee by merely stating that it is inexpedient to continue to employ the workman are violative of the basic requirements of the principles of natural justice in as much as that the general manager can impose penalty of such a drastic nature as to effect the lively hood and put a stegima on the character of the workman without recording reasons why disciplinary enquiry is dispensed with and what was the misconduct alleged against the employee.

12 It is true that the loss of confidence is no retrenchment, yet if loss of confidence is with stegima attached i.e. of forgery or accomplishing forgery there should have been a proper enquiry.

13. It is further argued on behalf of the workman that para 522'1' of Shastri Award does not give a blanket right to the management to terminate the service of any workman on the ground of loss of confidence without assisgning any reason. In N. B Shukla Versus Bank Of Baroda 1979 I LLJ page 291 Bombay High Court wherein it was held thus;

> That in case of termination even simplicitor the principles of Natural justice should have been followed i.e. the workman should not have been condemned unheard.

Observing in para 10 of the above said ruling it mentions as follows:

> Yet it can not be said that article 522(i) gives a blanket right to the employer to terminate at his sweet will and pleasure the services of any employee whose right to the post has been crystallised on his being confirmed or made permanent. It may will have been different if the particular period, which is not so, If Mr. Paranjape's contention is taken at face value. the result would be strange and startlig, namely, that each and every confirmed and permanent employee of the bank, howsoever long his service, would be permanently temporary or temporarily permant, with his services liable to be summarily dispensed with merely by notice of salary in liue thereof. The result would be disastrous and contrary to all cannons not only of the principles of the rule of law but also common sense. Art. 522(i) can not be contrued as a slavery bond for the employee to be left at the sweet will or caprice of the employer. Article 522(i) must also be read with artis 512 and 514. Art. 512 pertains to the effect on confimation or permanent appointment of the employee and states that on confirmation or permanent appointment an employee shall be entitled to all the previlages enjoyed by and shall be subject to all the liabilities cast upon, the other permanent members of the staff and makes provision for the addition of the period of his probation to the years of his permanent service for the purpose of grant to him of any gratuity. Surely, one of the privileges and in fact the right, of a permant employee is that he can not be arbitrarily dismissed at the pleasure of the employer Art. 514 provides that after the workman has reached the age of 55 years,

he may be retired after giving him two months notice in writing in case his efficiency is found by the employer to have been impared but otherwise should not be complied to retire before he is 58 years old. This article further demonstrates the petitioner's right as a permanent employee, to his post till he attained 58 years or 55 years as the case may be and militates against the hire and fire theory propounded on behalf of the bank.

14. In these circumstances and for the reasons given above and law discussed I hold that the termination of the workman without assigning any reason and without giving opportunity to him to show cause and in case of forgery without charge sheet is unfair labour practice illegal and violative of principles of natural justice. The termination thus being illegal, the result is that the workman is entitled to be reinstated with full back wages.

15. I, accordingly hold that the action of the state Bank of India Region III Varanasi in discharging Shri J. N. Dixit, Deputy Head Cashier, State Bank of India, Azamgarh w.e.f. 26-4-83 is not fair just and legal.

16. The result is that the workman is entitled to be reinstated in service with full back wages.

17. I, therefore, give my award accordingly.

Let six copies of this award be sent to the Govt. for publication.

Dt. 25-11-85.

R. B. SRIVASTAVA, Presiding Officer.
[No. L-12012(269)/83-D.II (A)]
N. K. VERMA, Desk Officer.

नई दिल्ली, 17 दिसम्बर, 1985

का. आ. 5759:—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार साउथ ईस्टर्न रेलवे, बिलास पुर (एम पी) के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2 दिसम्बर, 1985 प्राप्त हुआ था ।

New Delhi, the 17th December, 1985

S.O. 5759.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of South Eastern Railway, Bilaspur (M.P.), and their workmen, which was received by the Central Government on 2nd December, 1985.

BEFORE SHRI R. B. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Reference No. L-41012/(12)/82-D.II(B) dt. 16-2-1983

Industrial Dispute No. 163 of 1983

In the matter of dispute between :

Shri Rajendra Kumar and others, C/o Shri B. D. Tewari 96/196, Roshan Lal Bajaj Lane, Ganesh Ganj, Lucknow.

AND

The Senior Divisional Mechanical Engineer, Northern Railway, Lucknow.

APPEARANCES :

Shri B. D. Tewari—for the workmen.

Shri

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-41012/12/82-D.II(B) dated 16-2-83 has referred the following dispute for adjudication:

Whether the action of the Railway Administration in relation to their Loco Shed Northern Railway Lucknow in terminating the services of the 110 casual workers as in annexure w.e.f. 4-9-81 is justified if not, to what relief the concerned workmen are entitled?

Note: Annexure is attached with this award.

1. Annexure contains 110 names with their father's name. The case of the workmen is that they were recruited in different dates initially in column No. 4 of the Annexure 5 of the claim statement and were terminated on one date i.e. 4-9-81. They all had completed more than 240 days of work in one calender year preceding the date of retrenchment which was without notice, notice pay or retrenchment compensation. Further no information was given to the appropriate government as required under section 25F(C) as per demand notice dated 13-10-81 annexure I a gate meeting of the casual labours was done in which they demanded creation of the panel for all those casual employees who have completed 120 days and the irregularities in the department be done away and that the guilty persons be brought to book and that the casual labourers be given duty according to their seniority. The workman union left the illegal demonstration by application copy of which is annexure P-2 dated 29-12-81, but as the workman were not taken on duty they raised industrial dispute before ALC but the railway representative did not attend the conciliation proceedings hence the mater was concluded exparte. It is further averred that the management admitted retrenchment of railway employees regarding 207 workmen before the conciliation proceedings. In this court also the management went on taking time to file written statement on the pretext that document relating to the workmen of their retrenchment is not available as the same has been taken in possession by the Vigilence Department and has from March, 1984. Ultimately on 27-4-85, a shut order was passed that time to file written statement was allowed on cost upto 15-5-85 but when the managemen did not file the same nor paid the cost hence the right to defend and file written statement stood struck off and case proceeded exparte.

2. In support of its contention one Sushil Kumar has filed his affidavit and also one Shri Haran Banerjee stating that all the retrenched employees were retrenched on 4-9-81 without notice, notice pay or retrenchment compensation and that all of them have completed more than 240 days wtihin span of one year preceding the date of their termination. The termination has to be applied unit wise and as the workman completed 240 days and as they had been retrenched without notoice, the termination would be illegal and invalid in view of the law laid down in Mon Lal Vs. Bharat Electronics 1981 Supreme Court Labour & Service page 478 para 7 wherein it was held that where the services of the workmen were terminated after 240 days of work within span of 12 calender months, the retrenchment would be illegal if brought about without paying retrenchment compensation and he will be deemed to be continuing in service and entitled to full back wages."

Thus in view of the law discussed above and observation made above, I hold that the action of the Railway Administration in relation to their Loco Shed Northern Railway, Lucknow in terminating the services of the 110 workman with effect from 4-9-81 as given in annexure attached hereto with this award is not justified.

The result is that the termination being illegal, retrenchment is invalid and illegal all the workmen are entitled to be reinstated with full back wages.

I, therefore, give my award accordingly.

Let six copies of this award be sent to the government for publication.

Date 25-11-85

R. B. SRIVASTAVA, Presiding Officer
[No. L-41012(11)|82-D. II(B)]

ANNEXURE

Sl. No.	Name	Father's Name
1.	Shri Rajinder Kumar	Shri Ratau
2.	,, Lal Ji	,, Keshaw Pd.
3.	,, Ram Sagar	,, Janki Pd.
4.	,, Bikram Singh	,, Mangat Ram
5.	,, Jai Prakash	,, Ram Sunder Misra
6.	,, Abdual Gafoor	,, Abdakodor
7.	,, Ganga Ram	,, Dinaye
8.	,, Ram Bhusan	,, Sheo Mengal
9.	,, Kant Pd. Mandal	,, Banarsi Mandal
10.	,, Raj Kumar	,, Ambar Singh
11.	,, Gur Milau	,, Sant Bux
12.	,, Surya Pal Singh	,, Ram Singh
13.	,, Ved Prakash	,, Jai Narain
14.	,, Nand Kishore	,, Durga Prasad
15.	,, Modh. Siddiq	,, Subrati
16.	,, Ram Yag Shukla	,, Baldeo
17.	,, Vinod Kumar Sharma	,, Gokul Pd.
18.	,, Om Prakash Yadav	,, Beli Ram
19.	,, Ram Chander	,, Hazari Lal
20.	,, Krishna Kumar	,, Ram Avatar
21.	,, Rajesh Kumar	,, Ram Avatar
22.	,, Prem Kumar	,, Ram Avatar
23.	,, Sheo Ram	,, Chandika Pd.
24.	,, Badri Pd.	,, Prabhoo Dayal
25.	,, Virendra Kumar	,, Shawani Dayal
26.	,, Ahmad Raza	,, Hamid Raza
27.	,, Nand Kishore	,, Chandika Pd.
28.	,, Kunwar Pal Singh	,, Puttoo Lal
29.	,, Ram Ashar	,, Tilak
30.	,, Hari Shankar	,, Prem Nath
31.	,, Jag Deo	,, Tilok
32.	,, Singar Singh	,, Rameshwar
33.	,, Nanhoo	,, Ram Sharan
34.	,, Awatar Singh	,, Ram Awstar
35.	,, Bajrang Pd.	,, Ganga Ram
36.	,, Nawrang Pd.	,, Gaya Ram
37.	,, Shaubhoo Singh	,, Dukh Haran
38.	,, Ghan Shyam	,, Ayodhya Pd.
39.	,, K.P. Singh	,, S.B. Singh
40.	,, Girish Chand	,, Lila Dhar Joshi
41.	,, Bikram Singh	,, Girja Singh
42.	,, Bijay Bahadur	,, Ram Adhar Verma
43.	,, Suraj Pal	,, Bhag Singh
44.	,, Banarasi Lal Chaudri	,, Baboo Lal Chaudri
45.	,, Bhagwati Pd.	,, Tulsi Ram
46.	,, Sushil Kumar Srivatava	,, G K. Srivastava
47.	,, Mohd. Aslam	,, Aslam Khan
48.	,, Mohd. Rasul	,, Abdul Rahman
49.	,, Hari Chandra Pal	,, Sheo Dan Pal
50.	,, Raja Rao	,, Sarju Pd.
51.	,, Bikram Pd.	,, Rekha Ram
52.	,, Mubarak Ali	,, Amir Khan
53.	,, Mohd. Ayub	,, Hashim Ali
54.	,, Anil Kumar	,, Mahendra Kumar
55.	,, Sant Ram	,, Jokhaie
56.	,, Maimmulla	,, Habibullah
57.	,, Rajinder Kumar	,, Mohan Lal Misra
58.	,, Jaswant Singh	,, Jang Bahadur Singh
59.	,, Gur Charan	,, Santoshi
60.	,, Nagendra Kumar	,, R.P. Pandey
61.	,, Im Shamim Raza	,, Atar Raza
62.	,, Nankau	,, Shao Ram
63.	,, Ram Milen	,, Sant Ram
64.	,, Kallan Singh	,, Suraj Bali
65.	,, Jai Krishan Singh	,, Chanderki Pd.
66.	,, Ravi Shankar	,, Kallo Pd.
67.	,, Grish Kumar	,, Sawami Dayal
68.	,, Abbika Pd.	,, Sheo Baran Tewari
69.	,, Kuldeep Singh	,, Ishwar Singh
70.	,, Surrendra Pd.	,, Mahesh Ram
71.	,, S. Z. Mehdi	,, S.M. Mehdi
72.	,, Lawarance Mathew	,, V.D. Mathew
73.	,, Rahmad Ali	,, Shekhawat Ali
74.	,, Jai Prakash	,, Tyosh Karan
75.	,, Jiya Lal	,, Getalu
76.	,, Maqbool Ahmed	,, Abdual Rauf
77.	,, Secharan Banerji	,, Shanti May Banerji
78.	,, Indra Kumar	,, Raja Ram
79.	,, Daya Nand Misra	,, Mahadeo Misra
80.	,, Girja Thcukar Kharey	,, Sheo Mohan Kharey
81.	,, Safullah	,, Abdullah
82.	,, Kumesh	,, Reghwendra Singh
83.	,, Jai Singh	,, Suresh Singh
84.	,, Dinesh Singh	,, Regavendra Singh
85.	,, Sushil Kumar Pal	,, Mangli Pal
86.	,, Parween Kumar	,, Raja Rao
87.	,, Prem Chand	,, Mahesee Pd.
88.	,, Charan Jeet Singh	,, Manohar Singh
89.	,, Om Prakash Dubey	,, R.S. Dubey
90.	,, Sant Ram	,, Baboo Lal
91.	,, Mand Kishore	,, Sa hu Ram
92.	,, Lallen Singh	,, Pedo Singh
93.	,, Ram Shankar	,, Budhu Pd.
94.	,, Hera Lal	,, Kamla Pd.
95.	,, Vijay Kumar	,, S.K. Asthana
96.	,, Rawendra Singh	,, Sarjug Singh
97.	,, Sohan Lal	,, Patte Bhagat
98.	,, Site Ram	,, Sidh Gopal.
99.	,, Abhimanna Singh	,, Laxman Singh
100.	,, Vijaya Kumar	,, K.C. Saxena
101.	,, Gautam Pandey	,, Vindhyachal.
102.	,, Mohd. Hafoz	,, Sher Ali
103.	,, Surendra Kumar	,, Annande Lal
104.	,, Shyam Narayan	,, Kashe Pd.
105.	,, Mohd. Yunus	,, Ali Bahadur
106.	,, Harbans Yadav	,, Ram Avtar Yadav
107.	,, Bannare Lal	,, Bhava Ram
108.	,, Mathala Sadan	,, Giraja Pd. Tewari
109.	,, Shyam Ram	,, Ram Kishore
110.	,, Ijaz Ahmad	,, Istiq Ahmad

नई दिल्ली, 19 दिसम्बर, 1985

का. आ. 5766—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयरोड्रोम आफिसर सीविल एवीएशन, एयरपोर्ट, राजकोट के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक कोर्ट, गुजरात अहमदाबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-11-85 को प्राप्त हुआ था ।

New Delhi, the 19th December, 1985

S.O. 5760.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Court Gujarat Ahmedabad, as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of The Aerodrome Officer, Civil Aviation, Airport, Rajkot, and their workmen, which was received by the Central Government on the 29th November, 1985.

BEFORE SHRI A. N. RAM, INDUSTRIAL TRIBUNAL, AHMEDABAD

Reference (ITC) No. 3 of 1985 Adjudication.

BETWEEN

Civil Aerodrome, Rajkot.

AND

The Workmen employed under it.

In the matter of the workmen's demand regarding termination of services of one Shri Ahmad Ali Bhai Khokhar, Chowkidar.

APPEARANCES :

Shri R. A. Patel, Government Pleader, City Civil Court, Ahmedabad, for the First Party. Shri H. K. Rathod, Advocate for the Workmen.

AWARD-PART-I

This dispute between the Civil Aerodrome, Rajkot, and their Workmen, has been referred to this Tribunal by the Govt. of India, Ministry of Labour|Rehabilitation, Department of Labour Order No. L-11012(8)|83-D.II(B), dated 12-12-1984, read with Corrigendum No. L-11012(8)|83-D.II (B), dated 5th March, 1985. The dispute pertains to the termination of the services of one Shri Ahmad Ali Bhai Khokhar, Chowkidar. The exact terms of reference are as under :—

"Whether the action of the Administration of the Civil Aerodrome, Rajkot in termination service of Shri Ahmad Ali Bhai Khokhar, Chowkidar is justified ? If not, to what relief the employee is entitled to and from what date ?"

2. The statement of claim was filed on 11-10-1985 (Ex. 6). The first party, Civil Aerodrome, filed certain preliminary objections (Ex. 9) challenging the jurisdiction of the Tribunal to try and entertain the Reference pending before this Tribunal. There were similar 3 other references [References (ITC) Nos. 4, 5 and 6 of 1985] made to this Tribunal regarding other workmen of other Aerodromes in Gujarat and Shri Rathod and Shri R. A. Patel both agreed that the preliminary objections may be decided first before proceeding further, particularly since it was mentioned this Tribunal that there was a judgment on the same point in favour of the first party given by Central Government, Industrial Tribunal, Bombay. The Government pleader stated that they have raised similar objections in the other references and conceded that the decision in this reference on preliminary point would be applicable in those references also.

3. On behalf of the first party, evidence of Shri M. S. Ananthakrishnan, senior Aerodrome Officer, Ahmedabad, has been led (Ex. 10) in respect of the preliminary point. The second party has not led any oral evidence on the preliminary point. The first party has filed a zerox copy of the judgment of the Central Government, Industrial Tribunal, Bombay, referred to above. I have heard Shri R. A. Patel and Shri Rathod and have gone through the evidence adduced in the matter.

4. It has been stated in the written statement at Ex. 9 that the first party is a Civil Aviation Department and is under the direct control of the Central Government; that further Aerodrome Officer is under the Civil Aviation Department and persons serving in the department are appointed by the Central Government and that the pay and allowances are paid by the Central Government; that the activity of the Civil Aviation Department is an activity of the Central Government relating to sovereign functions and it is dealing with the defence of Government. It has, therefore, been stated the first party is not an industry under the Industrial Disputes Act. It has further been stated that the workman concerned in the reference who is appointed by the Central Government will not fall within the definition of the term "Workman" under the I.D. Act, 1947.

5. Now, in the case of Bangalore Water Supply and Sewerages Board Vs. A. Rajappa (1978 I LLJ p. 349), the Supreme Court has laid down tests and consideration for activities to be industry as defined under S. 2(j) of the I.D. Act as under :—

"Where there is (i) systematic activity, (ii) organised by co-operation between employer and employee (the direct and substantial element is Chimenical), (iii) for the production and|or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, prasad or food), prima facie there is industry in the enterprise.

Absence of profit motive or gainful objective is irrelevant be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on employer-employee relations.

If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking."

6. Explaining the term "undertaking", their Lordships observed;—

".....all organised activity possessing the triple elements although not trade or business, may still be industry, provided the nature of the activity, viz., the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of industry, undertakings, callings, services and adventures" analogous to the carrying on of trade or business. All features other than the methodology of carrying on the activity, viz., in organising the co-operation between employer and employee may be dissimilar. It does not matter if on the employment terms there is analogy.

7. It has also been held that "sovereign functions strictly understood alone qualify for exemption, not the welfare activities or economic adventures undertaken by Govt. or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j).

8. The concept of the expression "industry" has been put on a very wide canvass by the decision of the Supreme Court referred to above. We shall now examine the evidence which is led before the Tribunal in this case. Shri M. S. Ananthakrishnan, Senior Aerodrome Officer Ahmedabad, has given oral evidence before this Tribunal on behalf of the first party. No other oral evidence has been led before this Tribunal. In his examination-in-chief, he has stated as follows:—

"I am working in the Civil Aviation Deptt. since past 20 years. I am at present Senior Aerodrome Officer, This Deptt. is now under the Ministry of Transport. The Deptt. is of the Central Govt. Pay and allowances are given by Central Govt. Persons are recruited by Central Govt.

There are more than 6 aerodromes in Gujarat. All the aerodromes are controlled by the Central Govt. (Ministry of Transport). Our department maintains aerodromes (except international airports), provides air traffic control services throughout India, licencing and regulation of pilots and other crew. The area of the aerodrome is a prohibited area where persons with passes are only permitted. The Civil Aviation Deptt. is also concerned with unlaw-

ful interference in aviation, threats to security like bomb threat, etc."

In cross-examination by Shri Rathod, he has stated :—

"It is true that public is admitted after issue of ticket. Aircraft is operated by commercial organisation viz., Indian Airlines. Our deptt. provides facilities for landing, checking and security. Facility is given to private aircraft also. For each landing there are certain fixed charges which are laid in Indian Air Craft Rules. Amount depends upon weight of aircraft. Services rendered are—we provide terminal building, maintenance of runway, and other buildings, facility for storing oil etc. to Indian Oil. It is true that some land is given on lease to Indian Oil. Responsibility of taking away luggage etc. is that of Indian Airlines. Space is given to I. Airlines for affording facilities of counter. We give tender to a contractor for canteen. Space for parking of cars is also given on contract. We charge for the space given to anyone. Indian Airlines is also charged for space given for counter, office room, etc. Advertisements placed in aerodorme area are charged. There are show cases and bookstalls and these are charged by the Deptt.

Appointment letter to chowkidar is given by aerodrome officer. Aerodrome Officer is appointed by Govt. of India. In Ahmedabad aerodrome there are 13 chowkidars.

Chowkidar is doing guard duty on runway area and near the Gate. Staff for security purposes are taken on deputation from State Govt. and their salary is reimbursed."

9. From the evidence, it is obvious that there is a systematic activity viz., activity connected with the upkeep and maintenance of aerodrome including runways etc. for purposes of civilian air traffic inside the country. Facilities are provided for landing, checking and security; facilities of terminal building, including facility of counter and office, other buildings and facilities for storing oil needed for aircraft are also provided; charges are levied for each landing of aircraft depending on weight and for space given for counter, office room etc. Tender is given to a contractor for running a canteen at the aerodrome for the facility of the passengers; there are shaw-cases and bookstalls at the aerodrome run on contract and they are subject to charges. Space for parking of cars at the aerodrome is given on contract and charged. There is admittedly co-operation between employer and employee for rendering of the services connected with civilian air traffic inside the country.

10. The first party had raised a contention that it is a Civil Aviation Department and is under the direct control of the Central Govt., that the activity of the Civil Aviation Department is an activity relating to sovereign function of the Government and it is dealing with defence of Government. The first party had relied on the judgment of the Central Govt. Industrial Tribunal, Bombay, in support of its stand. I have gone through the copy of the judgment submitted by the first party. It is not a certified copy but only a zerox copy. However, in that case the facts are distinguishable; the workman concerned there, Shri Shetty, was an employee of the Civil Aviation Deptt. and he was on deputation to the International Airports Authority. It has been held by the Central Govt. Industrial Tribunal that the Civil Aviation Deptt. is not an industry, but it is not held that the International Airport Authority which is in charge of International airports like Bombay, Delhi, Madras, etc., is not an industry. This decision would not, therefore, be applicable to the present case. In Reference (ITC) No. 3 of 1985, the dispute pertains to the Civil Aerodrome, Rajkot; in Reference (ITC) No. 4 and 5 of 1985 to the Bhavnagar Aerodrome and in Ref. (ITC) No 6 of 1985 to Porbandar Aerodrome. These are distinct entities pertaining to maintenance and upkeep of the civilian airports at various centres other than International Airports and on the basis of the evidence narrated earlier, these entities cannot be excluded from the scope of the term "Industry". The contention of the first party that it is a sovereign function relating to defence is not proved by the evidence adduced. In fact the evidence shows that the activities are related to civil air transport and not to military air transport. The further argument that it is under the contol of Central Government and, therefore, not an industry, is not also maintainable since the Supreme Court has held that only sovereign functions strictly understood alone qualify for exemption; and even in discharging sovereign functions if there are units which are industries and they are substantially severable, they can be considered to come within the definition of the term "industry". Thus, from the evidence adduced, I hold that the first party in the References falls within the scope of the term "Industry". The employee concerned is a Chowkidar and is a workman under the ID Act. This disposes of the preliminary contention raised. This decision in respect of preliminary point would be applicable to the cases in References (ITC) Nos. 4 of 1985, 5 of 1985 and 6 of 1985 also, as agreed to by Shri R. A. Patel, Government Pleader, who is appearing for the first party in all the references. The References would now proceed on merits.

Dated : 22-11-85.

A. N. RAM, Industrial Tribunal

[No. L-11012(8)|83-D.II(B)]

का. आ. 5761:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इस्पात लाईम स्टोन क्वारीज आफ राऊरकेला स्टील प्लांट, सतना (मध्य प्रदेश) के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-12-85 को प्राप्त हुआ था।

S.O. 5761.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Cenertal Government hereby publishes the award of the Central Government Industrial Tribunal and Labour Court No. 2, Bombay, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Ispat Limestone Quarries of Rourkela Steel Plant, Satna (Madhya Pradesh) and their workmen, which was received by the Central Government on the 3rd December, '85.

BEFORE THE CENTRAL GOVERMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY.

Reference No. CGIT-2/22 of 1985

(Transferred to this Tribunal vide Ministry's order No. S/1125(1)/85-D. IV (B) dated 8-2-1985 from Jabalpur.

PARTIES:

Employers in Relation to the Management of Ispat Limestone Quarries of Rourkela Steel Plant, Satna (M.P.)

AND

Their Workmen

APPEARANCES:

For the Employers.—Shri A. P. Tare, Advocate.

For the Workmen:—No appearance

INDUSTRY: Quarries STATE: M.P.

Bombay, dated the 5th November, 1985

AWARD

By their order No. L-29011/19/83-D. III (B) dated 6-10-1983 the following dispute has been referred for adjudication under Section 10 (1) (d) of the Industrial Disputes Act, 1947:—

"Whether the work norm fixed by the management of Ispat Limestone Quarries at Babupur Satna of Rourkela Steel Plant with effect from 1-12-82, by their Circular No. II.Q/W-13/7660 dated 21-2-82 in respect of piece-rated workers of Ispat Limestone Quarries at Babupur Satna (M.P.) would be within the capacity of the workers to achieve and

earn the minimum of S-1 scale applicable to them? If not, what should be the work norm?"

2. The fixation of work norm by the management of Ispat Limestone Quarries at Babupur Satna of Rourkela Steel Plant with effect from 1-12-1982 has given rise to the present dispute and the contention of workmen in support of their claim is that when formerly the size of Lime Stone was 60 MM × 80 MM, the same was reduced to 40 MM × 80 MM as a result of which it over-burdened the piece rated workmen and therefore they are unable to fulfil the quota of work expected of them to enable them to earn minimum wages fixed for S-1 type of workmen. It is further stated that the distance for the purpose of removing and stacking is 30 meters when in fact is should have been 15 meters only and similarly stacking is required to be done at the hight of 15 ft., as a result of additional burden the workmen are not in a poisition to earn at the minimum rate prescribed.

3. All these contentions of the Union have been refuted by the management by their written statement whereby it is stated that the norms were fixed by the management after work study by technically qualified and experienced personnel of the Industrial Engineering department, which study was udertaken on a universally accepted scientific basis. For the said purpose these officers visited the aforesaid quarries and observed the actual working. While suggesting the norms the study group claimed to have come to the conclusion after considering the provision for required rest and personal allowance, rating of the workers with respect to the study of work showing at the standard time and corresponding measure out put and lastly the inclusion of the time required for lead and lift and exclusion of normal idle time during the course of working hours. According to the management the net result of the new norms is higher earnings by the workmen.

4. The same contentions have been reiterated by their rejoinder where it is further stated that the concerned employees are earning much higher than their counter-parts in other quarries in the vicinity and besides the management is spending an average amount of Rs. 373/- every month, per worker by way of fringe benefits like LTC, LLTC, PF, Bonus medical, etc. It is stated that only in the case of those workmen who deliberately avoided to work and idle their time are earning below the minimum average but not in the case of others who on the contrary earn more than the past.

5. The Union has also filed rejoinder whereby the same contentions have been made.

6. The issues which arise for determination and my findings thereon are:—

ISSUES	FINDINGS
(i) Whether the work norms fixed are within the capacity of the workers to achieve and earn the minimum of S-1 Scale applicable to them?	Yes
(ii) If not, what should be the work norm?	Does not arise.

REASONS

On 6-9-1982 as seen from Ex. M-5 a settlement was arrived at between the management and the Union whereby the management was to finalise the workload norm within a period of three months. There were other clauses with which we are not concerned in the instant case. In pursuance of this settlement the management fixed the norms as seen from Ex. M-2 dated 2-12-1982 fixation of which has given rise to the present dispute. Admittedly the size of Limestone is 40 MM × 80 MM and also the norms regarding the distance are 30 meteres from the Mining face and hight at which the material to be stacked has been fixed. Now the contention of the Union is that these norms are on the higher side as a result of which workmen are finding it very difficult to earn the minimum wages. Against this as already stated the case of the management is that the workmen are earning more than the past. Everything therefore depends upon how the norms are fixed and further whether the Union proves the difficulty as experienced by them so as to call for the intervention by the Tribunal.

8. Before us there is the evidence of Shri D.C. Pati belonging to the Industrial Engineering Department and Shri S. D. Jha, Mining Engineer who both stated to have undertaken the study for the purpose of fixing the norms and the manner in which they have fixed. It According to Shri Jha by changing the size from 60 MM X 80 MM to 40 MM X 80 MM what is being unacceptable in the past on account of undersize became acceptable, and it works to the advantage of workmen. He admits the minimum wages at S-1 scale per day is Rs. 36/- and that 70 per cent of the workmen are not in a position to earn them but according to him that was because of the laziness of the workmen. The witness also states that the piece rated workers in the quarry are being paid at highest rate in the region and that the workmen in the State Mining Corporation do not earn Rs. 12/- to Rs. 15/- per day. Only one factor is stated in favour of the workmen namely 70 per cent of the workmen are not earning at the minimum rate but when the witness has given cause for the same which when it has gone unchallenged I see no reason to disbelieve, that factor alone cannot advance the case of the workmen. The witnesses who are not cross-examined stated the process in which the norms were arrived at, which work was undertaken as per the settlement dated 6-9-1982. On record there is nothing to show that the workmen are earning less than in the past nor there is any evidence on record on behalf of the Union suggesting that the norms have cast additional burden on the workmen. It was the duty of the Union to substantiate their case which they failed to do, having remained absent at the time of hearing. The result is that in the light of the management's evidence there is nothing to hold that the norms are not within the capacity of the workers to achieve the minimum of the scale of S-1 applicable to them. On the contrary the evidence shows that not because of the difficulty created by the norms but because of the reluctance of the workmen to work hard which is cutting their earnings. The result is that there is no necessity to change the norms.

Award accordingly.

Dated : 6-11-1985.

M.A. DESHPANDE, Presiding Officer

[No. L-29011/19/83-D. III (B)]

का. आ. 5762:—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एयर इंडिया बम्बई के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-1, बम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-11-85 को प्राप्त हुआ था ।

S.O. 5762.—In pursuance of section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1. Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Air India, Bombay and their workmen, which was received by the Central Government on the 29th November, 1985.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT BOMBAY

Reference No. CGIT-3 of 1980

PARTIES :

Employers in relation to Air-India, Bombay.

AND

Their workmen.

APPEARANCES :

For the Employer—Mr. Kaka, Advocate.

For the Workmen—Mr. Dudhia, Advocate.

INDUSTRY : Airlines STATE : Maharashtra

Bombay, the 26th day of July, 1985

AWARD PART-II

A part award was made in this case on the 26th April, 1985, by which I have disposed off the first item of reference,

made to me in this reference. The other two were then left over, for consideration and decision at a later stage and I now proceed to deal with them. The other two remaining questions are as follows :—

"(2) Whether partial closure declared by the Air-India from August, 1974 under the Air-India Employees Service Regulations is legal and justified ? If not, to what relief are the affected workmen entitled ?

(3) Whether demand of the workers for payment of Bonus @ 20% for the years 1971-72, 1972-73 and 1973-74 is justified. If so, to what relief are the workmen entitled ?"

The Air India Employees Guild, hereinafter referred to as the Guild, which has sponsored this dispute and in this reference had filed its statement of claim dated 21st of January, 1981. On these two points, they have delivered a very cryptic and short statement of claim. It contended that consequent to the notice issued on 17th September, 1974, closure was forced upon 1200 employees of Air-India, which was not justifiable and was illegal and which they challenged. It was enforced on a supposition and assumption that the pilots had gone on strike from 1st of August, 1974, which the Guild does not seem to admit. According to it it was, as a matter of fact, a declaration of lock out by the Air-India w.e.f. 3rd August, 1974, by which the Air-India arbitrarily placed certain conditions upon pilots, and the pilots were not allowed to resume duties unless such arbitrary and illegal conditions were satisfied. Having declared a lock-out, the employer Corporation followed it up with a partial closure which deprived nearly 1200 employees of their full wages.

3. It contended that the so-called partial closure was illegal and malafide and arbitrary, firstly as no strike was launched by the pilots at all, and assuming that there was any strike by the pilots, the fact is that the employees have not supported the strike either directly or indirectly. Secondly, the said partial closure was not justifiable in view of the provisions of Section 25-FFA of the Industrial Disputes Act. In taking resort to the Air India Service Regulations, the Corporation committed a breach of S. 25-FFA of the Industrial Disputes Act. To the extent the service regulations are repugnant of the provisions of S. 25-FFA of the I. D. Act, they can not prevail. S. 25-FFA speaks of closure of an industry or establishment and it must be, whether it is permanent or temporary, a total closure and not a partial closure A parital closure is not contemplated in the section or the Act and it could not be resorted to under the service regulations of Air-India. Besides, and alternatively, its contention was that if partial closure could be imposed, the method and manner or procedure for enforcing partial closure was contrary to S. 25-FFA sub-section 2. No prior approval had been obtained, nor any exemption secured from the Govern ment.

4. Besides, it was urged that the partial closure was 'arbitrary', in that junior employees of shorter service were retained while senior employees were sent away. It was also urged by the Guild that casual labour was employed while sending away permanent staff. For these reasons, it contention was that the partial closure was invalid, illegal and malafide. Besides, it seems to be also its further contention that as a number of pilots had expressed their willingness to report for duty and fly, the continuation of the so-called partial closure.therefore, according. to the Guild was "for ulterior reasons." As the lock-out was illegal, malafide and invalid, the partial closure consequent upon it, was also not valid, legal or justified.

5. In this reference and while dealing with these surviving items, I do not propose to refer to the various stages and vissicitudes through which this reference has passed and go directly to the contentions relevant to these two items, which were sought to be urged by the disputing parties to this reference. The Air-Corporation Employees Union hereinafter referred to as ACEU, another union which joined as a party to this reference, has not raised any contentions in regard to the said partial closure and the bonus dispute.

6. The employer's written statement, relating to the item of partial closure was delivered on the 8th of September, 1983 only. There it was contended that the closure which was contemplated under the Service Regulations and the one contemplated by the Industrial Disputes Act were different. The employer Corporation had not imposed any closure, partial or otherwise under the Industrial Disputes Act. That erroneous assumption of the Guild, according to the employer, has led to the various contentions, which it had raised. It disputed the contention that the pilots had not gone on strike and contended that they went on strike with effect from 2nd August, 1974 from 1700 hours and refused to fly chartered flights of Indian Airlines or international flights from 5 p.m. onwards on that date. This resulted in "almost total dislocation and stoppage of the corporation's flights." This strike, acrording to Air-India, was both illegal and unjustified and the Corporation was forced under the circumstances, to declare a lock-out with effect from 3rd August, 1974 from 0800 hours. It also said that the lock-out was not total in that those pilots who were prepared to operate flights on the basis of new crew-scheduling pattern were allowed to report for duty and fly.

7. The lock-out declared. therefore, by the Air India, it was contended was fully justified and legal and had been held to be so in a proceedings taken up by the Pilots Guild in Civil Suit No. 6703 of 1974. The pilots had sought an interim relief by way of injunction to prevent the Corporation from introducing slip system of operations or pattern. which was dismissed. The air services were, thus, affected on account of circumstances beyond the control of the Corporation. The Corporation by its notice dated 18th September, 1974, had effected partial closure "in some of the departments/sections of the Corporation," in terms of Regulation 53 of the Air India regulations. It pointed out that the number of affected persons was only 1020 and not 1200. That of these, 465 employees belong to Flying Crew category which are not members of the Guild. The dispute can, therefore, only be confined to 555 employees, the 465 having not raised the dispute. Even these employees, according to the Corporation, also did not suffer as they were allowed to adjust the period of partial closure against their accumulated privelege leave. All those employees who did not have any accumulated privelege leave were also allowed to adjust it against their future leave. All the employees have done so and they have. therefore, not sufferred in terms of any monetary loss.

8. The Air-India, therefore, drew distinction between the closure contemplated under the Industrial Disputes Act and the partial closure contemplated under the Service Regulations of Air India and pointed out that for reasons beyond its control, it had to enforce partial closure, which was on account of unlawful strike of the pilots, the Air services thus, having been severely affected and crippled. It urged that it was entitled to enforce and introduce a new system of crew scheduling operations. It could, therefore, insist upon the pilots to undertake and to operate flights on the basis of the slip pattern. The conditions imposed by it were not arbitrary or illegal. It was one of it's managerial function to manage and organise its services in accordance with what it thought fit as a commercial and business operation.

9. Consequent to the pilots going on illegal and unjustified strike and lock-out, the work was affected in various other departments and sections, which had therefore to be paritally closed in accordance with the provisions of Regulations 53. The affected workmen then had to be tackled under Regulation 55 and they had been, accordingly, dealt with. It pointed out that the contentions of the Guild would require and contemplate adjudication and going into the question whether the nilots strike was justified or otherwise and that, that was outside the terms of the reference and could not be gone into. It could not also be considered as to whether there was strike or a lock-out of the pilots. that being also outside the terms of the reference.

10. Question whether there was a strike or a lock-out being outside the terms of the reference it was said, the only question requiring decision is whether partial closure is "legal and justified" in accordance with the Air India Employees Service Regulations. There was no question of invoking the provisions of the Industrial Disputes Act much less S. 25-FFA. The regulation had been appropriately brought into force with the previous approval of the Central Government and had been made in exercise of the powers conferred under S. 45 of the Air India Corporation Act. The closure, partial or otherwise, contemplated under the regulations is entirely different from the one contemplated under S. 25-FFF or S. 25-FFA. It was also further pointed out that the relationship of employer and employee between the employees and the Corporation continued during the perio

No prior permission for declaration of such a partial closure was required and was not sought. By and large and generally though it was not necessary for the Corporation to follow the principles of seniority in laying off the affected workmen, it did follow the "principles of seniority." According to it, the junior most in each category was laid off and the employees have voluntarily adjusted the period of partial closure against privelege leave either actually earned or future accumulation or earning of privelege leave, and there was in reality no loss to the employees.

11. As regards the bonus, the Corporation filed its balance sheets and profit and loss accounts for the relevant years namely 1971-72, 1972-73 and 1973-74. No specific contentions or challenges to the particular items or figures were raised by the statement of claim filed by the Guild. No calculations were also filed, except at a later stage. At a later stage, on behalf of the Guild, it was pointed out that a similar claim for bonus for the year 1981-82 was raised and was referred to arbitration. That decision has gone against the Guild. The contentions and items and heads of expenditure or revenue in respect of each contention raised before the Arbitrator were and are also the contentions which were raised by the Guild in respect of these three years before me. In view, however, of the decision of the arbitrator, it was said that the same contentions may be considered and dealt with. In what respect, however, the arbitrator's decision was not acceptable to it was urged during the course of the arguments. I was also informed that against the decision of the arbitrator, an appeal has been preferred to the Supreme Court. The decision, thereof, is not so far received. Both sides agreed that contentions which were raised before the arbitrator for the Guild and for the Air India should be taken as also urged and referred and raised in the present case and dealt with. In the circumstances, I do not propose to specifically refer to the statement of claim or the written statement which incidentally does not have any such reference.

12. Item No. 2, as set out above, requires adjudication on the question whether "partial closure declared by Air India from August, 1974 under the Air India Employees Service Regulations is legal and justified ?" Though that is so, as may be noticed from the references made in the pleadings, questions as to whether there was strike or lock-out, question as to whether the strike was legal or justified as also the question whether the lock-out was legal or justified were sought to be dragged in. The controversy as to what happened between the period 31st of July, 1974 and say, some part of August and later is not a subject specifically referred to me. Adjudication or pronouncing, therefore, upon the question whether it was a strike or a lock-out and whether it was further legal or justified, as I stated, is really outside the purview of the reference. However, before dealing with that aspect of the matter in respect of which the Guild addressed considerably lengthy arguments, it would be better to recapitulate a few facts.

13. The Air India was operating its services on what is, or was known as the base pattern prior to July, 1974. It appears that the Corporation wanted to switch over to the slip pattern of crew operations and with that view had initiated discussion with the Indian Pilots Guild. It, thereafter decided to introduced slip pattern of operations with effect from the 1st of August, 1974 for pilots on India-UK route, and with effect from 1st November, 1974 on India-Japan route for pilots, navigators and staff engineers.

14. As the pilots Guild did not take kindly to this it had issued an alert to its members on the 27th July, 1974, asking them "not to undertake, repeat not to undertake, any flights involving slip pattern." which was proposed to be introduced from 1st August, 1974. On the 2nd August and 3rd August, pilots refused to fly according to the slip pattern though required. On 3rd August, Air India, issued a notice and order saying that with effect from 1 a.m. on 3rd August, 1974, "there shall be a lock out in the Operations Department" of the Air India in respect of "Senior Captains, who are workmen, excepting those Senior Captains and Captains who have agreed to operate flights on the basis of the slip pattern of crew scheduling." In other words, there was a lock-out so far as Senior Captains and Captains, who did not agree to fly according to the slip pattern of crew scheduling, but there was no lock-out for those who agreed to fly and operate the flights on the revised slip pattern of crew-scheduling.

15. This situation continued till about 31st October, 1974. The aid lock-out notices were issued on 3rd August and it was lifted from 3rd November, 1974. In the meantime as the operations of the Air India were affected, on 17th September, 1974, it declared a partial closure in certain departments which came into force with effect from 18th September, 1974. In all, according to the management, about 1020 workman were affected by the declaration of partial closure. According to the Guild, the number was 1200 During the course of the hearing of the reference, this figure of 1,020 given by the Corporation was accepted and the Guild did not show that that was not the correct figure. Of these 1020 employees, those owing allegience and membership of the Guild were only 555, while the remaining employees were not members of the Guild. According to the Corporation, only these are the concerned workmen. It may be mentioned that this is also not disputed during the hearing of the reference by the Guild. We are in the present case therefore concerned with only 555 employees.

16. A number of contentions were advanced before me with regard to whether the pilots had gone on a strike or whether the Corporation had declared a lock out. The Corporation contended apart from the contention that that is outside the purview of the reference that the issue had been raised at the instance of the Pilots Guild before the City Civil Court and that the City Civil Court has recorded a finding against the Guild and in favour of the Corporation. That no further proceedings have been taken up and therefore according to it, a competent court declared the strike as illegal and unjustified and it is that the pilots who had gone on strike, while the Corporation had declared a lock out.

17. Attempts were made to induce me to pronounce upon the question of legality or otherwise of the strike and the question whether there was a strike at all. Similar attempt was made with regard to lock out. The two questions of strike and lock-out are closely connected and any pronouncement or discussion on the question as to legality and justification of the strike would have involved also discussion and conclusion with regard to lock-out.

18. To my mind, apart from the fact that such a question has not been referred to this Tribunal, it is totally unnecessary for me to go into that question. What we are concerned in the present case is with the situation which was the genesis or reason for the declaration of partial closure. Therefore, whether on account of the strike which was justified or legal or whether the strike was unjustified or illegal and similarly whether on account of it, the lock-out declared was legal and justified or otherwise the result thereof was that the operations of the Corporation were affected. No tangible or material benefit is likely to result, and no consequence would follow from any such adjudication or finding as regards the validity or justifiability and legality either of the strike or lock-out on the consequences which ensued or followed from the situation. If the strike was unjustified and illegal, it is the pilots and the flying crew who will suffer and be required to face the consequences. On the other hand, if the strike is legal and justified and lock-out was illegal and unjustified, it is the Corporation which may bear the consequences. But that is a matter only between the flying crew and the Corporation. I can not see how that can or is likely to be of any benefit to those workmen whose work got affected on account of a situation resulting from a strike or lock-out, whether legal, valid or justified or otherwise. That is clearly why the reference is also worded in the manner in which we find it.

19. The reference order also further sets a limited task, before the Tribunal, of concluding and finding or adjudicating on the justification and legality in accordance with the provisions of the Air India Employees Service Regulations and describes it as a "partial closure". It is, therefore, not closure upon which adjudication is to be pronounced, but only a partial closure and its "legality" and 'justification' has to be examined not with reference to anything else, but the Air India Employees Service Regulations.

20. The first contention which was advanced in this connection was that the regulations must conform to the provisions of the Industrial Disputes Act. There are a subordinate legislation and can not be against the provisions of

the Parliamentary act, namely the Industrial Disputes Act. If therefore, the Industrial Disputes Act provides for closure and also says in what circumstances 'closure would be legal and justified, then it is the provisions of the Industrial Disputes Act, which would be applicable, it was contended, and not the provisions of the Air India Employees Service Regulations. It was, therefore, contended that closure as defined in the Industrial Disputes Act and the procedure relating to closure, the permission which is necessary to be obtained in the case of closure, not having been obtained, and closure not having been allowed the closure itself of partial closure was unlawful. Secondly and alternatively, it was contended that if the Industrial Disputes Act requires that closure should be in force and brought into practice in a certain manner then deviating or departing from that procedure is unlawful, arbitrary and malafide. In that event an arbitrary and malafide application of the principles of enforcement of closure would invalidate and render the closure itself unjustified and illegal.

21. Reliance was therefore, placed upon the definition of 'closure' and the provisions of the Industrial Disputes Act dealing with it. 'Closure' is defined as "permanent closing down of a place of employment or part thereof." The other section, which is relevant and which was referred was S.25FFA and incidentally section 25FFF. Now, if we see the definition of closure as contained in S. 2(cc), it is extremely difficult to say that what was done by the Corporation can be described as "permanent closing down of a place of employment." On the other hand, partial closure was obviously a temporary measure intended to tide over a temporary situation and difficulty. If that is so, then to my mind, the definition is not applicable to the present set of facts.

22. We can not read S.25FFA and S.25FFF dehors the definition of closure as contained in S. 2(cc) of the Industrial Disputes Act. S.25FFA requires an employer intending to close down an undertaking, to give a 60 days notice before it becomes effective to the Government in the prescribed manner. In other words, the section applies where an employer 'decides', to introduce the words of the definition, upon "permanently closing down a place of employment." In such a case he will have to send a notice in the prescribed manner to the Government of the intended closure and shall follow the requirements of such section, such as furnishing reasons and submitting a form in the prescribed manner. Where the closure is a temporary measure, if it can be so described, then it is clear to my mind that S.25FFA can have no application at all. The kind of closure, therefore, which was contemplated and put into practice by the Air India Corporation is not a closure which is covered by the Industrial Disputes Act.

23. The same applies to the provisions of S.25FFF. That section also uses the expressions "close down" and "closure" and "compensation". The kind of action, therefore, which was taken by the Corporation does not fall within the purview and concept of "closure" as defined under the Industrial Disputes Act. The words 'partial closure' do not at all appear in the Industrial Disputes Act and such a concept is not known to that Act, except in the form of lay-off. It is significant that the regulations upon which the Corporation relies, also and Regulation 55 prescribed the procedure for implementation of action under Reg. 53 and 54 by way of 'lay-off'. Partial closure, therefore is more in the nature of lay-off than closure, which is considered in the Industrial Disputes Act S. 2(cc) and S. 25(FFA) and S. 25(FFF). I am purposefully using the words in the nature of lay-off. I am aware of the definition of the word lay-off, as given in S. 2(kkk) of the Industrial Disputes Act. That section describes a lay-off to be "failure, refusal or inability of an employer" on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched." It is capable of being argued that in view of the words 'other connected reasons", that lay-off has to be in some way connected. if it is for other connected reasons, connected with the shortages of coal power or raw-materials, accumulation of stocks of breakdown of machinery. The pilots strike can not be termed as a natural calamity and therefore prima-facie, it is difficult to treat what was done by the Corporation as a lay-off as contemplated under the Industrial Disputes Act. The Action, must however, be deemed to be in the nature of lay-off.

24. It will thus be seen that the provisions of Industrial Disputes Act, relating to closure and lay-off, as they are, are not attracted to this situation and do not cover a case of this kind. Once we therefore put away the difficulty and obstacle raised of the provisions of the Industrial Disputes Act being attracted and affecting the action taken and making it illegal, then the contention based thereon will equally be rejected. The Corporation, therefore, is clearly right in contending that the Industrial Disputes Act has no application to a situation and action of this kind and it has to be decided in the light of its own regulations. The Industrial Disputes Act does not govern what was done by the Corporation.

25. We then turn to the Corporation's regulations. That they are supplementary and govern the conditions of service of the Corporation's employees can not be disputed. If therefore, the action taken by the Corporation is provided and legitimate under the Regulations, then the workmen at least can not complain that it is without authority or not in in accordance with law. Indeed, it would be entirely in accordance with the regulations governing the conditions of service between the employer and the employee. Chapter 10 of the Regulations provides for closure. The closure in the present case, it is contended for the Corporation is under Regulation 53. Exhibit E-22 as also Exhibit-E-1 are the notices in question by which partial closure was declared. It would be useful at first to examine what is set out therein. That says that the pilots have illegally and unjustifiably gone on strike and the Corporation had therefore, to declare a lockout from 3rd August, 1974. It then proceeds to say "on account of the continuation of the said illegal strike, the Management has now been reluctantly compelled to close down partially the departments and sections mentioned in the attached list."

26. In para 2 of the notice, it further says that it is not possible to say "as to how long the partial closure will continue". In para-3 it provides for adjustment of period of partial closure against previlege leave, if due.

27. Exhibit-E-1 and E-22 are identical in terms, though are of different dates. Three positions therefore follow from this notice. They are that as a consequence, whether of the lock out or of the strike, the partial closure had to be enforced in the effected departments and sections, secondly that it was not possible to say how long this situation will continue and thirdly, that the affected persons would be entitled to set off the period of partial closure against their previlege leave.

28. The closure notice, undoubtedly suffers from an omission or lacuna in that it fails to describe or state, though it was not seriously disputed and the evidence in that behalf was adduced by parties, that the operations of the Corporation have been affected. It would have been clearly better, if the Corporation had stated in its notice that as a consequence of the action of the pilots and the response of the Corporation, the flight operations have been severely curtailed and affected. It would have been more in consonance with the wording of the regulation, than deeming it by inference to incorporate the conditions which enabled the Corporation to resort to the provisions of Regulation 53.

29. At the time of the hearing of the reference, reliance was placed upon Regulation 53, sub-regulation 2. It would however, be useful to reproduce both sub-regulations 1 and 2 regulation 53, which read as follows:—

Regulation 53:—

"(i) In the event of the fire, catastrophe, break-down of machinery, stoppage of supply of power or aviation spirit, epidemic, civil commotion or other cause beyond the control of the Corporation, the Managing Director, may, at any time, without notice or compensation in lieu of notice, stop any machine, or close down any section or department, wholly or partially, or the whole or part of the establishment for such period as may be deemed necessary."

"(ii) In the event, however, of the stoppage or cancellation of air services due to circumstances beyond the control of the Corporation, the Managing Director may, at any time, close down any machine, section or department affected by such stoppage or cancellation. The fact of such stoppage or closure shall be notified on the notice Board."

30. Reliance upon Regulation 53(i) was sought to be made with a contention that the action under Sub-regulation 1 of Regulation 53 can be taken in the case of stated contingencies and the words "other cause beyond the control of the Corporation" have to be read ejusdem generis. It was contended that the expression or the phrase "beyond the control of the Corporation" in conjunction with specific instances resulting in the requirement of their closing down wholly or partially the establishment, section, machine or department, can not be interpreted as a different and separate power not connected with the earlier contingencies or occasions. In other words, the other causes beyond the control of the Corporation must be such as analogous to a fire, catastrophe, breakdown of machinery, stoppage or supply of power or aviation spirit or epidemic, civil Commotion, and no other. There may be some merit in this contention. But, if the power of the Corporation and the reach thereof was intended to be whittled down, then words other like causes beyond the control of the Corporation' could have been used and would have been used. The argument, to my mind, only on the basis of collocation of phrases in the context is too weak for acceptance straight away.

31. It is not, however, necessary to examine this contention and question more closely, as that is not the only power of partial closure in Regulation 53. If sub-regulation 2 were not to be there, then perhaps that would have become necessary. Sub-regulation 2 is not conditioned by any such context. It straight away provides for a particular contingency, namely, "stoppage or cancellation of air services." That is why, I had pointed out that it would have been much better and proper for the Corporation to specify and say in the notice itself that on account of strike and lock-out, there has been "stoppage or cancellation of air services."

32. Stoppage or cancellation of air services is a fact, which could be established and brought home by clear factual evidence. At no stage, even in the pleadings to which I have made a reference did parties really join issue on this question. The Guild has not contended that there has not been stoppage or cancellation or air services on account of strike or lock-out. At the time of the trial and during the reference, some attempt was made and evidence sought. Ramnathkar who was examined on behalf of the Corporation during his cross-examination stated that lay-off had become necessary on account of "curtailment of operations and on account of strike by the pilots. The operations were affected by the strike by about 95%.. My personal knowledge then was that the operations were affected to the extent of 95%." The suggestion made to him is also significant and he was asked whether the operations were affected only to the extent of 60%.

33. Ghalib in his evidence stated that during the period of lock out of pilots, 40% of the flights were operating on an average. It will thus be seen that it is an admitted position that 60% of the flights could not be operated. They had either to be stopped or cancelled. It obviously follows from this that the first part of the requirement of sub-regulation 2 of regulation 53 was satisfied. All that remains then is to examine whether that was so "due to circumstances beyond the control of the Corporation."

34. Here again, there is inadequacy of pleadings and case. It was not contended that the cancellation or stoppage of air services was not due to circumstances beyond the control of the Corporation, because the Corporation could have withdrawn its lock out. By imposing a lock out, it had kept the pilots out. The stoppage or cancellation of services, therefore, was on account of the act of the Corporation and not on account of circumstances beyond its control. This might have left the door open for a discussion or adjudication on the question of legality or otherwise of the strike. The action of the lock out and its continuation by the management from this angle would have become questionable. As I pointed out that contention has not been raised, nor any material placed before me. In the present set of facts and circumstances, I do not also think that there is any scope for raising this contention, though in a given situation, it may be possible to do so. The reason for this obviously is the pilots had moved the jurisdiction of the City Civil Court. I am also inclined to take the view that what the pilots did with reference to the action intended and proposed of introducing the slip pattern of view operations by the Air India from 1st and Second August, was nothing but a strike.

35. 'Strike' is defined in S. 2(q) of the Industrial Disputes Act and means "cessation of work by a body of persons in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, or any number of persons who are or have been so employed, to continu to work or to accept employment". Now I have already pointed out and referred to the direction given by the pilots Guild to its members on the 27th July, 1974. It was nothing else, but to refuse to accept the employment or continue to work on a slip pattern, which the pilots thought was contrary to the settlement and the Corporation could not enforce. Nevertheless, what the Guild and the pilots did was "refuse to accept employment" and "refusal to continue to work." Ordinarily, the change of pattern of crew operations from base to slip would be and was a managerial function. Pilots Guild took the view and sought as it turned out to be an erroneous view that it was against the settlement and contract. What is material and relevant for our purposes is the fact that the action of the pilots amounted to going on strike and as a consequence of the strike, the flights were curtailed and air services had to be cancelled or stopped.

36. While imposing a lock out and lifting a lock out are within the power of the Corporation, calling off of a strike is not. It, therefore, the strike was called by the Pilots Guild, and if the pilots were on strike, that was a circumstance "beyond the control of the Corporation." The Corporation could, therefore, legitimately resort to the powers conferred upon it by sub-regulation 2 of regulation 53. If as a consequence of the strike of the pilots, there was a resultant stoppage or cancellation of air-services a partial closure could be imposed. I have already pointed out to the evidence given, which clearly concludes and establishes that flight operations were affected to the extent of 60% if not more. From what I have held and for the reasons, which I have given above, it must be held that there was stoppage or cancellation of air services during the period August and September, 1974 on account of reasons beyond the control of the Air India Corporation. The Corporation, therefore, was clearly justified and had the power under Regulation 53(2) to declare partial closure. It could, therefore, close down a section or department affected by such stoppage or cancellation.

37. I may at this stage, refer to some of the decisions to which a reference was made. Some of these decisions relate to a period when S. 25FFF and S. 25FFA were not on the statute book. At that time, the only applicable section was S. 25F which relates to retrenchment. The difference between the two sections 25F and S. 25FFF has been pointed out in some of these decisions. The earlier decision to which a refetence was made was Hotel Ambassador Vs. its workmen and others (1963-II-LLJ-p. 87). There certain workmen were disbanded to effect economy in the operations. The action was found to be justified. However, objection was taken in not following the principles of S. 25G which "requires that the retrenchment should be effected category-wise; and that in effecting retrenchment, the principle of last come first go must be applied." What had happened in that case was that some sections were intended to be closed and the work in these departments distributed amongst workmen of other sections. The contention was not accepted and the court pointed out that "the appellant has altogether closed the special department for painting, whitewashing and polishing unholstering work, and it is not possible to find fault with the appellant, because one of the ways in which economy in expenditure could be effected obviously was to close this department and distribute the work of the said department among some of the pre-existing employees. That being so, it is not possible to hold that S. 25F has been contravened."

38. The next decision was workmen of Indian Leaf Tobacco Development Company Ltd., Guntur Vs. Indian Leaf Tobacco Development Company Ltd., Guntur (1970-I-LLJ-p. 343).

The company had about 21 depots for collecting tobacco, which it used to supply to Imperial Tobacco Company Limited. It decided to close down eight of its depots. An industrial dispute, therefore, was referred. The award given by the Tribunal was challenged in the Supreme Court. The Court observed "the closure of the eight depots by the company, even if it is held not to amount to closure of business of the company, cannot be interfered with by an industrial tribunal, if, in fact, that closure was genuine and real. The closure may be treated as stoppage of part of the activity or business of the company. Such stoppage of part of a business is an act of management which is entirely in the discretion of the company carrying on the business."

39. The Court in that case referred to the decision in Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills' Mazoor Union (1957-I-LLJ-p. 235) as also the decision in Employees of India Reconstruction Corporation Ltd., Calcutta Vs. India Reconstruction Ltd., Calcutta (1953 L.A.C. 563), and pointed out that "at the time when this decision was given, ss. 25FF and 25FFF had not been introduced in the Industrial Disputes Act, and the only right to retrenchment Compensation granted to the workmen was conferred by S. 25F. "Court says "In a case where a dispute may arise as to whether workmen discharged are entitled to compensation under S. 25F or 25FFF, it may become necessary to decide whether the closure, as a result of which the services have been dispensed with amounts to a closure in law or not."

40. In the Radio and electricals Ltd. Madras Vs. Industrial Tribunal, Madras and others, Justice Alagiriswami, Judge of the Madras High Court, as he then was delivered the judgement reported in (1970-II-LLJ-p. 206). In that case, a part of the activity of the company ,which was dealing in mechanical and electrical works, decided to close down the mechanical part thereof. Referring to the Hotel Ambassador and Indian Leaf Tobacco Co. Ltd. cases (supra) it was held that closure of a part of the business is permissible, and "consequently retrenchment compensation is payable under S. 25FFF and not under S. 25F.

41. Similarly, in the Raj Hans Press Vs. Labour Court, Delhi and others (1977-II-LLJ-p. 524), a letter press was shut down. The Press was having a letter press and an off-set press and the workmen were interchangeable or sometimes assigned to do the work at the other press. There it was sought to be urged that the workmen had been retrenched and not that there was a closure or partial closure. The court however, came to the conclusion on the facts of that case that though the principle "that a closure of part of the business of a larger undertaking can itself amount to closure has been accepted", closing of a particular shop or machine, does not amount to a closure. In that view it was held that what was done was retrenchment and not closure of the undertaking.

42. Lastly reliance was placed upon Cachar Chah Shramik Union, Silchar, Assam Vs. Tea Estate of Cachar, Assam and others (1966-I-LLJ-p. 420). There 20 tea estates were to be closed down on account of economic slump. Under the standing orders which were applicable to the industry under C. 8(a)(i), the industry could be closed down for other causes beyond the control of the management. Clauses 8(a)(i) and 8(a)(iii) were reproduced in that case, which incidentally happen to have a close similarity with the wording of Regulations 53(1) and (2) and regulation 55. Even a case of sudden slum in the world market and consequent financial difficulties were treated in that case as falling within clause 8(a)(i), namely "other causes beyond his control", empowring closure under the standing orders. The present case on the basis of the evidence to which I have already made a reference is a much stronger case.

43. During the hearing, a reference was also made to a decision reported in General Labour Union (Red Flag) Bombay V/s. B. V. Chavan and others (1985-I-LLJ-p. 82) where the subject of lock out and closure was discussed and elaborated. It was then pointed out that a closure need not be "irrevocable, final and permanent." The closure on account a situation may be called for and becomes necessary and when the situation disappears, the establishment can reopen and function. The facts in that case were entirely different and the decision referred has also no applicability to the present case. There on account of closure, entire establishment was closed. Later, however, the employer wanted to reopen and restart the activity, where upon, the question had arisen. Such a situation is not there in the present case.

44. As regards the principle to be followed even in the case of retrenchment, there were two decisions. We have a decision which may be of some assistance and relied upon in the peculiar facts of this case. In following retrenchment, rule to be followed is 'last come first go'. This, it was contended, was followed in the case of Om Oil and Oil seeds Exchange Ltd., Delhi V/s. their workmen (1966-II-LLJ-p. 524). The Supreme Court observed "in the application of the rule the interests of the business cannot be overlooked." The rule has to be applied where other things are equal and the management must act fairly to the employees." "But the rule is not immutable and for valid reasons may be departed from."

45. That takes me to the only other question which was urged and pressed. The partial closure was sought to be challenged on this contention, and criticism levelled against application of the procedure adopted in imposing partial closure. The procedure followed it was contended was arbitrary and mala-fide rendering the partial closure itself illegal and invalid. The contention is that the rule 'last-come-first-go' has not been followed, and is supported by a reference to the seniority lists and the lists of the persons affected cadrewise. It was attempted to be shown that while junior persons were retained, senior persons were asked to go. This resulted in a loss to them in that they had to sacrifice their previlege leave which had been earned or to adjust and set it off against future earning of the previlege leave. Reliance was placed upon the evidence of Ramnathkar to point out that the statement that the rule was followed by and large is disproved by Ramnathkar's evidence. I do not propose to go into the details of this evidence for two reasons. In the first instance, it may be pointed t no particular employee had complained of he being f under Reg. 54 in preference to the other, and the other more substantial reason is that the rule is inapplicable.

46. It must clearly be understood that it is not a case of retrenchment or closure as contemplated under the I. D. Act. In the case of closure in either of these sets of facts means a cessation of relationship of employer and employee. The employee concerned ceases to continue in the employment of the erstwhile employer in a case of retrenchment or closure. In a case of partial closure permitted under the Regulations prevailing in Air-India and available, such a closure does not bring into effect, nor does it produce a break in the relationship of employer and employee. The employee continue to be in the empoyment of Air India But he is not taken on work and laid off for the reasons permissible under the regulations. Those reasons I have already held above are justified and valid. If, therefore employer, employee relationship continue and the relationship of the master and servant is not broken, there is no room for application of the rule 'last come first go', as there is no going at all. There is no go. Therefore, the first part of the principle can not apply.

47. Besides, it is quite clear that where partial closure occurs or for that matter a lay-off is effected on account of certain permissible reasons, such as a natural calamity, shortage of power, shortage of orders, coal or some other such reason beyond the control of the employer like in this case, the strike of section of the employees affecting the work in other sections or areas, it is not possible to apply the rule 'last come first go', for the simple reason that a particular section wing or department is affected on account of that reason. Lay off or partial closure is effected in those sections or areas where the reasons existing have affected that work. It is the affected areas, sections and activities, which are required to be closed down, no matter who is actually doing that work, senior or junior. In the circumstances, where there is no scope for application of the rule, the attempt to follow that rule by and large, even if there has been departure on occasions can not brand the entire action malafide or arbitrary. Even in a case of retrenchment it has been held, as pointed out earlier that is not an "immutable rule." Departure therefrom can be made. If that is so and it in the exigencies of business, there may be a departure from the rule all the more so in case where the rule has no application at all. In the circumstances, even if there may be a few instances or cases, where a senior

person has been let go and a junior retained on account of partial closure. I do not think that will enable the employees, and the union, to claim that the partial closure is arbitrary and malafide, vitiating the entire action. In that view, of the matter, it has to be held that the partial closure declared by the Air India from 18th September, 1974 was legal and justified and the workmen are not entitled to any relief.

48. That leaves the demand for bonus for the years 1971-72, 1972-73 and 1973-74 for consideration. The term of reference in this case was "whether demand of the workers for payment of Bonus @ 20% for the year 1971-72, 1972-73 and 1973-74 is justified. If so, to what relief are the workmen entitled ?" A cryptic statement was filed by the Guild by its statement of claim with regard to bonus for these years, when it filed the statement of claim of 21st January, 1981. According to it, it was for Air India to file the calculations and that after the management filed its calculations, it has to file its say, as it was for the management to show that bonus according to law was paid. It would be only then that the Guild will submit its calculations and satisfy the Tribunal that the demand is justified. This is clearly an incorrect way. The Guild had made the demand for 20% bonus and it had to show on the basis of the accounts furnished and profit and loss account statements given by the Corporation to them, as to how according to it 20% bonus was payable, or what according to it was payable in law. No such calculations, statements or particular items appearing in the accounts, balance sheets and other statements were challenged upto the end of this reference on behalf of the Guild.

49. The ACEU filed its statement on 24th March, 1982, which also did not say anything with regard to bonus demand. The employer Corporation also did not file its reply, contending obviously that no calculations and no specific challenges to any items in the balance sheet or profit and loss accounts have been raised and therefore, they were entitled to rely upon the presumption arising out of S. 23 of the Payment of Bonus Act and that what was paid was more than to which the workmen were eligible.

50. At the time of the hearing of this reference, however, it was stated that the demand of the employees for a subsequent year, namely, 1981-82 was referred to an arbitrator and the arbitrator has given an award. It was also stated that the arbitrator's award was challenged by the Guild in an appeal before the Supreme Court, but at the time when the reference was heard, the outcome of that appeal and the question whether it has been admitted or no was not available. It was however stated by Mr. Dudhiva, the learned counsel for the Guild, whose arguments in this connection were adopted by the ACEU that same points which were raised before the arbitrator are raised by the Guild for those years also before me. They should be taken therefore as the points of contention with regard to the bonus demand for the years 1971-72, 1972-73 and 1973-74 also. Same contentions of the parties should be taken therefore as contentions with regard to bonus. It was also pointed out that for the subsequent years, namely, 1981-82, its contentions have been repeated. The unions in the present claim for bonus for the earlier years are adopting the self same contentions, and earlier years are adopting the self same contentions, and therefore, the position in the arbitrator's award would govern these bonus claims also. That position was conceded. The arguments therefore on the part of the parties on this question and bonus for these years were restricted and confined to pointing out to me what were the answers made by the arbitrator to these contentions raised in respect of various items. The nature of these contentions are to be found in statements A and B given for each years in the documents filed by the Guild at Exhibit W-2. Against each of the items, a further reference is given for facilitating the finding of that item. A bonus calculation is thus filed. It takes the net loss or profit whatever is shown in the accounts and then adds or subtracts figures which according to it ought to be taken in accordance with the Payment of the Bonus Act. We may take 1971-72 as a sample year. That is because, the disputed items referred in all the other years are the very same. The other items, such as profit or loss shown in the books, bonus paid to the employees, depreciation and such other items as appearing therein have not been disputed. Statement A would show that four heads of items have been disputed. They are (1) Provision for doubtful debts Rs. 10.86 lakhs, (2) Amount set aside self insurance scheme 23.70 lakhs, (3) Staff Gratuity Reserve Rs. 16.72 lakhs, and (4) Forward sales account-passenger and cargo Rs. 894.96 lakhs, which is a major blocks, allowing or disallowing of which item would completely change the picture with regard to bonus payable. The Guild has sought to add this amount. According to these calculations of the Guild, 20% bonus would be payable for the years 1972-73 and 1973-74.

51. The Guild's contentions were challenged on behalf of the Corporation by the learned counsel for the Corporation, Mr. Kaka, who contended that the unions have not given any particulars, nor have they asked for any particulars from the employer. The employer has given all the justification; has given the balance sheets and profit and loss accounts, which go to show that there was no justification for the demand for increased bonus to be paid. He pointed out that for the year 1971-72, there was a very large deficit and there was no amount for carry forward and no set on available. On the other hand, there was a set off even according to the union calculations. For the year 1972-73, no bonus becomes payable more than what was paid. Same position, according to him, applies for the year 1973-74. There have been no pleadings with regard to the dispute raised by way of calculations on the items and statements prepared and regarding calculations, in Exhibits W-1, W-2 and W-3. His contention was that mere filing of calculations without any pleadings as to why according to the workmen these amounts should be added or deducted can not be considered at all. Any calculations without any support of pleadings to enable the employer to know the contentions and reasons, can not be considered and the items either deducted or added. It was also his contention and further submission that all the contentions which are now raised have been considered by the arbitrator, Shri Justice Dighe, in his award and have been dealt with in paragraph 4.21 of that award. He, therefore, relied upon the arbitrator's award.

52. As stated earlier, the Guild did not file any application or statement challenging any particular item or sought clarification from the Corporation. It, however, filed certain statements at Ehibit W-2, for the three years in question, namely 1971-72, 1972-73, and 1973-74, which, according to it, is the calculation of bonus payable. These statements have been prepared in accordance with the Second Schedule of the Payment of Bonus Act, for computation of bonus. It would be convenient to take up the discussion of these statements, bearing in mind the criticism that the statements not supported by any pleadings and challenges with regard to particular items, without any remarks can not be considered. Even assuming that such statements can and have to be considered, the following discussion follows.

53. It would be convenient to take up the calculations filed by the Guild for the year 1971-72 and 1972-73 in the first instance. It may be mentioned that the profit and loss account statements filed by the Corporation, which are duly audited and certified as required under the Air Corporation Act by the comptroller General and Auditor of the Government of India. Presumption under S. 23 of the Bonus Act therefore is applicable. It was contended that the presumption under S. 23, applies not merely to the figures as occurring under different heads as mentioned in the Profit and Loss Account and balance Sheet, but also to the quality and character of that item of expenditure or otherwise as the case may be and can not be objected to by the employees.

54. The Schedule to the Bonus Act provides as stated in S. 6, certain additions to the amount of profit or loss as in the Profit and Loss Account and also certain deductions. Consistent therewith, for the year 1971-72, the Guild has sought to add provision made for depreciation of Rs. 719.67 lakhs and a sum of Rs. 946.24 lakhs on account of any other reserves under item 2(e) of the Second Schedule. It also, similarly sought to add under item 3(d), a sum of Rs. 1203.31 lakhs as a capital expenditure. The same figure has also been shown under item 3(e) also. Certain other similar items of figures under item 4(i) a, b, c and d have also been sought to be added. With the result, according to the Guild, the total of items No. 1, 2 and 3 of the Bonus Act Second Schedule comes to Rs. 2810.38 lakhs from which deductions have to be made giving us a net allocable surplus or total gross profits for purposes of bonus calculation. The only deduction sought to be made is a sum of Rs. 7.32 lakhs, leaving a gross profit of Rs. 2803.06 lakhs for distribution as allocable surplus.

55. The three important items in col. 2 of the Schedule are bonus paid to the employees, depreciation and any other

reserves, details whereof and the contentions of the Guild are to be found in Statement A which are also very cryptic. With regard to the first amount of Rs. 35.04 lakhs as bonus, it will, be seen that the bonus amount actually paid to the employees for the year 1971-72 is Rs. 42.70 and not Rs. 35.04 lakhs. According to the Guild's own calculations, for the year 1971-72 (statement-g of W-2), go to show that there was actually a defect of Rs. 162.69 lakhs on account of difference in taxation as per statement f and g. Even assuming therefore, that the Statement of the Guild is correct for the year 1971-72, even according to the Guild, there was no allocable surplus and the employees were not entitled to anything more than 8.33%, which is the minimum under the Bonus Act. Consequently, therefore, there would be a set off to be carried forward for the year 1972-73. The demand therefore of the increased bonus for 1971-72, even on the basis of calculations of the Guild must fail.

56. It would be advantageous to consider certain claims which are made for addition for the year 1971-72 at this stage, as these claims figure again for the following years. That amount is Rs. 946.24 lakhs, the break-up of which is to be found in Statement-A. The major item thereof, however is passenger and cargo forward sales, comprising of Rs. 894.96 lakhs. Similarly, we may also take up for consideration and into account, an amount of Rs. 1203.31 lakhs in item 3(d), which the Guild seems to want to treat as a capital expenditure and not revenue expenditure as claimed by the Corporation. For the year, 1972-73, figure shown as forward sales-passenger and cargo is Rs. 994.76 lakhs, while Capital expenditure and capital losses stands at Rs. 1,682.19 lakhs as per statement-B. For the year 1973-74, these figures are Rs. 1,432.33 lakhs and Rs. 1829.55 lakhs respectively.

57. I have already indicated what is the contention of the Guild in respect of these major items, which contention, if not accepted it is clearly admitted, that the demand for increased bonus than what was paid can not be borne out. Since the matter was argued only on that hypothesis and in view of the situation that most of the contention which are now raised relating to additions or deductions as per second schedule were raised before the Arbitrator, Mr. Justice Dighe, who has already made an award, it is not necessary to go into them in any further detail. The only items which were not considered by the arbitrator, as they were not raised before Arbitrator, Justice Dighe, were "other Engineering expenses" and "General Administration," totalling to an amount of Rs. 190.67 lakhs for the year 1973-74 as may be seen from Statement :B'.

58. I will now refer to the Arbitrator's award in this behalf. The passenger and cargo amount, which was claimed as laible to be added was on account of the fund or reserve which was maintained by the Corporation representing the forward sales. From out of this, the amount which is not required is transferred to the revenue account and further sales are shown and brought up in this cargo and passenger sales reserve. The relevant discussion in that behalf is to be found in paragraphs 4.8 to 4.11 in the arbitrator's award. It will be seen therefrom that it is customary in the aviation industry to effect sales of passenger tickets and cargo which are forward sales. When a passenger travels on the airline or cargo is carried by the Airlines, that part of the money is taken up as the operating revenue. A balance however, still remains. It is carried forward from year to year and is held for the payments to be made in cases of claims for refund or by the other airlines on which either the passenger travels or the cargo is carried. Where such traffic is transferred to the other airlines, these airlines make claims, and to meet these claims this amount of forward sales is carried from year to year. At the time when the balance sheets and profit loss accounts are drawn up, these figures are not readily available. A part of this amount would become available normally, when possibility of claims for refund or for transfer to other airlines become obsolet. On an average, it was found that such amount would be 16 to 17% of the total revenue. The airlines, has not been following this practice of creating that percentage every year until it started doing so far the year 1981-82. The amount, therefore, it was held is not a reserve, which would be legitimately credited under Item 2. Only a part of it may be available. It continues to be a liability consistent with the practices in the aviation industry, of payments or of refunds sometimes even after the limitation period. The arbitrator, therefore, rejected that claim and I think the same position being available, and for the same reasons, this claim has also to be rejected.

59. As regards other items, which, according to the Guild are items of capital expenditure and capital losses, contrary to the claim of the Corporation that they are revenue expenditure and revenue losses, that part of the contention which was raised before the arbitrator for the year 1981-82 and has been dealt with the disposed off by him in paragraphs 5.21 to 5.33. It was also a bone of contention between the parties, whether they were items of revenue expenditure or capital expenditure for that year before the arbitrator. The major items in that figure are pilot training, interest on 747 project loan and publicity and sales promotion. All these have been accepted as revenue expenditure both by the Income Tax authorities Comptroller and auditor general and chartered accountants and auditors, who have audited the accounts of the Corporation. They have been correctly held and shown to be revenue expenditure as distinguished from capital expenditure, in the sense that no long-term asset, capable of producing revenue or as addition to the revenue making facility was acquired. The amount paid on account of flying training to the Indian Airlines was under an agreement and by way of fees for drawing upon the experienced pilots of the India Air Force, whose services the Corporation obtained when engaging them. It was pointed out and accepted that had this not been done, then the Corporation would have been required to spend a considerably larger amount for training its own pilots. Instead of doing it by itself, it draws from the Indian Air Force, taking advantage of the training, which was already imparted to the pilots.

60. The expenses on account of such imparting further training to the pilots of flying the commercial air-crafts can not be a capital expenditure. Similarly, interest paid on borrowings for the purchase of 747 air-crafts is a revenue expenditure under the accepted norms and definition of what is revenue expenditure. The acquisition of the air-craft is a capital expenditure, but interest reu'red to be paid is paid from the operating revenue. Similarly, with regard to the publicity and sales promotion, this expenditure is incurred for the purposes of increasing the business of the Corporation. Under the circumstances, if these major items are disallowed, then it is clear that the case of the Guild for a higher quantum of bonus for the relevant years is totally unsustainable.

61. It may be pointed out in addition, that for the year 1972-73, even on the basis of the Guild's calculation, the available surplus comes to Rs. 127.26 lakhs, while allocable surplus thereof would be Rs. 76.36 lakhs. Deducting therefrom the set off, which was carried forward from the year 1971-72 of Rs. 42.70 lakhs, there would be a sum available of Rs. 33.66 lakhs for distribution. The bonus paid for that year actually is Rs. 39.83 lakhs, and this was in excess of the payable sum of Rs. 33.66 lakhs by Rs. 6.17 lakhs. There is, therefore, even on the Guild's own showing, no case at all of any increased bonus for the year 1971-72 and 1972-73. For the year 1973-74, if the aforesaid major items are disallowed, then there would be no claim for payment of bonus in excess of what has been paid to the workmen for the year 1973-74. In the circumstances that claim and demand must also fail and it has to be rejected.

R. D. TULPULE, Presiding Officer

[No. L-11025(1)/76-D.II (B)]

नई दिल्ली, 20 दिसम्बर, 1985

का. आ. 5763:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर डिविजनल पर्सनल आफिसर नारदर्न रेलवे, के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण पान्डुनगर कानपुर, के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2 दिसम्बर, 1985 को प्राप्त हुआ था ।

New Delhi, the 20th December, 1985

S.O. 5763.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Industrial Tribunal, Pandu Nagar, Kanpur (U.P.) as shown in the Annexure, in the Industrial dispute between the employers in relation to

the management of Senior Divisional Personnel Officer, Northern Railway and their workmen, which was received by the Central Government on the 2nd December, 1985.

BEFORE SHRI R. B. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Reference L-41011(66)|83-D. II(B) dated 7th June, 1985
Industrial Dispute No. 116|1984

In the matter of dispute.

BETWEEN

Shri Abdul Shaid and five others C|o Shri B. D. Tewari 96|196, Roshan Lal Bajaj Lane, Ganesh Ganj, Lucknow.

AND

The Senior Divisional Personnel Officer, Northern Railway, Lucknow.

APPEARANCE :

Shri B. D. Tewari—for the workmen.
Shri None—for the Rly. Management.

AWARD

1. The Central Government, Ministry of Labour, vide its notification no L-41011|66|83(D)(II)(B) dated 7-6-84, has referred the following dispute for adjudication;

> Whether the action of the management of Northern Railway, Lucknow in relation to their Senior Divisional Personnel Officer, Lucknow, in terminating the services of S|Shri Abdul Shaid, Om Prakash, Roshan Lal, Direndra Prasad, Mohammad Hanif, and Chandra Shekher w.e.f. 3-10-81, 3-10-81, 3-10-81, 3-10-81, 3-10-81 and 4-9-81 respectively is justified ? If not, to what relief is the workmen concerned are entitled ?

2. Briefly narrated case of all the workmen are that Shri Abdul Shaid, workman alongwith 20 workmen were employed in the Loco Running Shed Northern Railway Lucknow and were retrenched by the Senior D.M.E. Northern Railway Lucknow on 5-9-81. The union raised industrial dispute in respect of all the workmen but only six names referred in the schedule have been referred for adjudication to this tribunal. It is further averred that Shri Abdul Shaid was appointed on 21-8-79 and worked upto 5-9-81 and in this way he had completed 665 days of work in one continuous period. Shri Om Prakash was also appointed on some times in April 79 and was terminated on 5-9-81 and thus worked for 700 days in one calender year. Similarly Shri Roshan Lal was also appointed some times in the month of April 79 and has completed 600 days when his services were terminated on 5-9-81. In the same way Shri Roshan Lal, Dhirendra Prasad and Mohammad Hanif were appointed in April 79, September, 79 and February, 79, respectively and their services were terminated on one date i.e. 5-9-81 after completing 600, 550 and 550 days of work in one span. Lastly in the same manner Shri Chandra Shekhar was appointed on 30-6-79 and his services were too terminated on 5-9-81 after completing 820 days of work at a stretch. It is further averred that the management have violated the provision of section 25F of the I.D. Act as no notice pay or retrenchment compensation was given to the workmen before their termination and also no notice was given to the appropriate government.

3. It is further averred that one juniors were retained in service while their services have been terminated and in this way termination is illegal void ab initio and is liable to be set aside. In the end it is prayed that all the workmen be reinstated in service with full back wages.

4. The management has not filed their reply and sought times on one pretext or the other. The claim statement of the workmen was filed on 13-6-84 and since then the management is not filing written statement and seeking adjournments on different counts. 9-8-85 was the date fixed for filing the w.s. but on the date none appeared for the management and ultimately ex parte argument on behalf of the workmen were heard.

5. Shri Abdul Shaid has filed his affidavit evidence for himself and on behalf of his co workers. He has stated therein that he was appointed on 3-10-81 in Loco Shed Lucknow, Om Prakash was appointed in April 79, Shri Roshan Lal was appointed in April 79, Shri Dhirendra Pd. was appointed in September, 79, Mohd. Hanif was appointed in February 79 and Chandra Shekhar was appointed on 30-6-79. All the above workmen were retrenched from their services on 3-10-81 where as services of Shri Chandra Shekher were terminated on 4-9-81. It may be mentioned here that the date of retrenchment of Shri Abdul Shaid is mentioned as 3-10-81 in the affidavit whereas in the same para deponent has mentioned the same date as the date of his appointment In statement of claim the date of appointment of Shri Abdul Shaid is mentioned as 21-8-79. It is further deposed that the deponent alongwith his co-workers have completed more than 240 days of work in one calender year and before terminating their services the management has not given notice, notice-pay or retrenchment compensation and thus had violated the mandatory provisions of the act. He has further stated that there was no stoppage of work in the loco shed Lucknow in the month of September of October, 81 and there was no reason shown, no formal letter issued and no justification given by the railway management before their retrenchment.

6. The deponent has further stated that he alongwith other co-worokers were receiving Rs. 425 as salary at the time of their retrenchment with other allowances admissible at the time of their retrenchment. He has further deposed that they are entitled to Rs. 7860 per head as wages upto 5-10-83 and onward upto 5-12-84 at the rate of Rs. 655 per month total Rs. 9170 per head.

7. In the instant case all the workmen have worked for more than 240 days work in one calender year and thus had acquired the status of the temporary workman and as such are entitled to the c.p.c. scale rate. It has also been held by the Supreme Court of India in its decision given in the case of M. Sunder Money Versus State Bank of India, 1975, that the retrenchment for any reason whatsoever will amount to termination. In the instant case admittedly the management has not shown any reason for retrenching the services of the workmen neither he had given notice, notice-pay or retrenchment compensation before terminating their services. Thus the retrenchment by not following the mandatory provisions is illegal viod ab intio and is liable to be set aside.

8. Moreover, workman Abdul Shaid has substantiated his case on the point of retaining the junior persons in the service while they were retrenched without assigning any reason, thus the termination of the workmen will also be illegal on this count, and they are entitled to be reinstated in service.

9. In view of the discussion made above, I hold that the action of the railway management in terminating the services of S|Shri Abdul Shaid, Om Prakash, Roshan Lal, Direndra Prasad, Mohammad Hanif and Chandra Shekhar w.e.f 3-10-81, 3-10-81, 3-10-81, 3-10-81 and 4-9-81 is not justified.

10. The result is that the workmen are entitled to be reinstated in service with full backwages.

11. I, therefre, give my award ex parte accordingly.

12. Let six copys of this award be sent to the Government for Publication.

Dt : 25-11-85

R. B. SRIVASTAVA, Presiding Officer

[No. L-41011(66)|83-D. II(B)]

HARI SINGH, Desk Officer

नई दिल्ली, 17 दिसम्बर, 1985

का. आ. 5764:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चन्दमेट्टा कोलियरि, मेसर्स वस्टेर्न कोलफील्ड्स लि के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अभिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9 दिसम्बर, 1985 को प्राप्त हुआ था ।

New Delhi, the 17th December, 1985

S.O. 5764.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Govoernment hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chandametta Colliery of W.C.L. and their workmen, which was received by the Central Government on the 9th December, 1985.

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT|LC(R)(24)|1984

PARTIES :

Employers in relation to the management of Western Coalfields Limited, Chandametta Colliery, P. O. Chandametta, District Chhindwara (M. P.) and their workman Shri Ram Awatar S|o Shri Sukhdin, Security Guard, represented through the M.P.K.K. M. Panchayat (HMS) P.O. Junnardeo, District Chhindwara (M.P.).

APPEARANCES :

For Workman.—Shri G. N. Shah, General Secretary of the Union.

For management.—Shri P. S. Nair, Advocate.

INDUSTRY : Coal. DISTRICT : Chhindwara (M.P.).

AWARD

Dated November, 29th, 1985

By Notification No. L-22011|40|83-D.III(B)|D. (V) dated 26th April, 1984 the Central Government in the Ministry of Labour has referred the following dispute to this Tribunal, for adjudication :—

"Whether the action of the management of WCL, Pench Area in relation to their Chandametta Colliery in terminating the services of Shri Ram Awatar S|o. Shri Sukhdin, Security Guard, with effect from 23-10-1978 is justified ? If not, to what relief the workman is entitled ?"

2. Non-controversial facts of the case are that the workman Shri Ram Awatar S|o. Shri Sukhdin was working as Security Guard in Chandametta Collieries of the management of Western Coalfields Limited.

3. The case of the workman is that he was ill and the Company's Hospital was not imparting proper treatment. He was therefore under treatment outside with effect from 9-9-1978 to 5-11-1978 regarding which he informed the management. However, during this treatment period the management terminated his services orally under so called Clause 19 of the Standing Orders without any notice, enquiry etc.

4. The case of the management is that it was not aware of his illness and he gave no information about his treatment. In fact, there was no termination of service by the management. The workman remained absent without permission or intimation from 9-9-1978 to 5-11-1978. Therefore the provisions of the Clause 19 of the Standing Orders came into play. Thus the workman himself by his own action brought about the cessation of service.

5. In the alternative remaining absent without leave and without intimation for such a long period is misconduct. The workman remained silent for nearly six years without any justification. Reference is bad in law and highly belated.

6. The main point for consideration is the justification of the impugned order.

7. The workman has pleaded that he is the permanent employee of the management. This fact has not been specifically denied by the management. The permanent employee has been defined in Sub-clause (b) of Clause 3 of the Standing Orders as a person 'appointed for an unlimited period or who has satisfactory put in three months' continued service in a permanent post as a probationer'. This position with regard to the workman is not disputed before me.

8. It is true that the workman adduced no evidence as to this illness or intimation to the management. Thus he will be deemed to have absented himself without intimation or prior leave from 23-10-1978 to 5-11-1978.

9. On behalf of the management reliance is placed on Clause 19 and Sub-clause (1)(n) of Clause 18 of the Standing Orders. The first limb of its contention is that Clause 19 reproduced below lays down that absence from duty without giving any information to the management for more than 30 days automatically terminates the services of the workman :—

"If a workman absents himself without giving any information to the manager for more than 30 days his services will automatically stand terminated."

The second limb of its contention is that Sub-clause (1)(n) of Clause 18 clearly lays down that 'Continuous absence without permission and without satisfactory cause for more than ten days' amounts to misconduct. Therefore his services were terminated for misconduct vide order dated 23-10-1978 which was sent to his home address the receipt of which has been filed on record.

10. On behalf of the workman the Union representative has challenged the applicability of the said Standing Orders. I am of the opinion that I need not go through this aspect of the matter for which no proper foundation has been laid by evidence and production of documents. The law is very clear on the point. The Certified Standing Orders the relevant provisions of which are pertinent. I will just go through them before I consider the law on the point.

11. I have already pointed out that firstly it is proved that the workman Shri Ram Awtar was a permanent workman. Clause 14 of the Standing Orders lays down that for termination of the services of permanent workman having less than one year continuous service as defined in Section 2(oo) of the I.D. Act, 1947 a notice in writing or wages in lieu thereof at the scale indicated below shall be given by the employer :

(i) For monthly paid workman.—One month.

(ii) For weekly paid workman.—Two weeks.

Admittedly no such notice or wages in lieu thereof has been given. To my mind the provision of Clause 19 are subject to the condition of Clause 14 being fulfilled. That having not done this Clause 19 of the Certified Standing Order is of no avail to the management.

12. Coming to the second limb of the contention I find that even if it amounts to misconduct even then his services could not have been terminated without notice and compensations. There is a procedure laid down for disciplinary action for misconduct in Clause 18. The relevant portions of Sub-clause (1) of Clause 18 is reproduced below for the sake of convenience :—

"A workman may be suspended or fined or his increment may be stopped, or he may be demoted or dismissed without notice, if he is found to be guilty of misconduct."

The same clause under Sub-clause (ii) however lays down as under :—

"18(ii) No order of punishment under Standing Order No. 18(i) shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the allegations made against him. A departmental en-

quiry shall be instituted before dealing with the charges. During the period of enquiry, the workman concerned may be suspended. The workman may take the assistance of a co-worker to help him in the enquiry if he so desires. The records of the departmental enquiry shall be kept in writing. The approval of the owner, or agent or the Chief Mining Engineer of the employer shall be obtained before imposing the punishment of dismissal."

The Sub-clauses (iii) and (iv) respectively lays down the procedure in case he is found guilty or not guilty. Thus the contention of the learned Counsel for the management that his services could have been terminated without the necessary domestic enquiry and following the provisions of Section 25F of the I.D. Act does not hold good.

13. My learned predecessor had the occasion to consider Clause 19 of the Certified Standing Orders in the case of Datla West Colliery of M|s. W.C. Ltd., Kanhan Area and their workman, Case No. CGIT|LC(R)(26)|1982 decided on 10th May, 1982. Relying the case of L. Robert D'Souza Vs. The Executive Engineer, Southern Railway and another (AIR 1982 SC. 864) he had held that termination of workers' services without complying with the provisions of I.D. Act cannot be sustained.

14. Section 25-J provides "that the provisions of this Chapter shall have effect notwithstanding anything in any other law including Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946).

(Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act).

(2) For the removal of doubts it is hereby declared that nothing contained in this chapter shall be deemed to affect provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay off and retrenchment shall be determined in accordance with the provisions of this Chapter."

15. In the case of Factory Manager, C.I.M. Mfg. Co. Ltd. Vs. Naresh Chandra (1985 LAB I.C. p. 941) the High Court of Madhya Pradesh has observed as under :—

"...in view of the catena of Supreme Court decisions termination of service under Standing Order 11 also will come within the mischief of retrenchment as defined under Section 2(oo) and unless S. 25F is complied with the termination will be void."

16. For the reasons discussed above I find that without complying with the provisions of the Certified Standing Orders relied on by the management itself and the provisions of the Industrial Disputes Act, the termination of the workman, Shri Ram Awatar with effect from 23-10-1978 is not justified under law.

17. The normal rule is that when the order of termination is set aside, the workman is entitled to back wages and all ancillary reliefs. As such burden was on the employer to establish circumstances warranting departure from the normal rule as has been held in the case of Singheshwar Prasad Vs. General Manager, Bhilai (1979 MPLJ 773).

18. In view of the above legal position the contention of the management that the workman is not entitled to back wages since he did not allege or prove that he tried to minimise the losses, burden was on the management to plead and prove the same.

19. The second contention of the management is that the workman is any case responsible for his termination by his unauthorised absence, as such he is not entitled to all the back wages. This contention cannot be said to be without merits. To my mind in the circumstances of the case the workman is entitled to reinstatement with all other ancillary reliefs but back wages only from the date of reference i.e. 26th April, 1984.

20. As stated above, since the termination of the workman is found to be illegal it would meet the end of justice if the workman Shri Ram Awatar is reinstated in service as Security Guard with effect from 23-10-78 but back wages only from the date of reference i.e. 26th April 1984 with all the benefits. The period from 22-10-1978 till 25-4-1984 be treated as dies non. He shall further be entitled to Rs. 100 as costs of these proceedings.
Dt : 29-11-85

V. S. YADAV, Presiding Officer
[No. L-22011|40|83-D. III(B)|D.V]

नई दिल्ली, 18 दिसम्बर, 1985

का. आ. 5765 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम, के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2 दिसम्बर, 1985 को प्राप्त हुआ था ।

New Delhi, the 18th December, 1985

S.O. 5765.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on the 2nd December, 1985.

(ANNEXURE)

PRESENT SHRI R. B. SRIVASTAVA PRESIDNG OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT KANPUR

Reference No. L-41012(13)|82|FCI-D-IV(A) dt. 4th August 1982

Industrial Dispute No. 98|83

In the matter of dispute

BETWEEN

Shri Zulfiqar Hussain C|o Shri M. Shakeel 1 Abdul Aziz Road Lucknow

AND

The Senior Regional Manager, Food Corporation of India 6|7 Habibullaha Estate Lucknow.

APPEARANCE:

Shri M. Shakeel representative for the Workman
Shri R. R. Manshing repr. for the management.

AWARD

1. The Central Government Ministry of Labour, vide its notification no. L-41012(13)|82|FCI-D.IV(A) dt. 4th Aug. 1982 has referred the following dispute for adjudication.

Whether the action of the management of Food Corporation of India, Lucknow in terminating the services of Shri Zulfiqar Hussain with effect from 20-5-1974 is justified ? If not to what relief is the concerned workman entitled ?

2. The case of the workman is that he was a casual labour under the management depot at Talkatora Lucknow on daily wages at the rate of Rs. 4 per day and worked w.e.f. April 19/1 to 15-6-73 in continuous service without any break. That after the completion of 240 days of service the management appointed the workman in clear vacant post of workman known as ancillary labour w.e.f. 15-6-73 alongwith 250 other workmen in the same category of service as permanent. This was done under the management head office New Delhi instruction to departmentalise direct payment to workers and on this court from 15th June 73 the workman getting fixed salary at the rate of Rs. 204 per month. That in the month of May 74, officer incharge of the labour cell wanted him to do some legal at his residence which the workman declined as a result of which officer incharge got intimated and the services of the workman were terminated by verbal orders of the Deputy Manager without any reason, notice and charge sheet. That the workman made representation to the Senior Regional Manager Food Corporation Lucknow, who directed his sub officer to allow the workman to join duty. Despite that he was not given duty. The workman made representation in writing as well as verbal but no action was taken. That no show cause notice was given to the workman before his termination. It is further averred that number of persons were appointed after termination of the workman, hence the management violated the provision of section 25H and G of the Industrial Dispute Act. That some workman whose services were terminated were later allowed to join the duty and in this way the workman was discriminated. That at the time of his termination the wages amounting to Rs. 907 and the retrenchment compansation under section 25 F of the Industrial Dispute Act was not paid and that the termination is illegal and the workmen deserves to be reinstated with full back wages. Lastly it is averred that the District Manager Food Corporation of India had no authority to terminate his services but only Senior Regional Manager FCI who was appointing authority can terminate his services.

3. The management contested the claim of statement on the ground that the workman never completed 240 days work in between April 71 to July 73 as alleged by the workman. He however, admits that according to office records the workman worked only for 130 days. It is further averred that the service of the workman came to an end by efflux of time i.e. desertion of service without notice from duty and wilful abondonment of the job. The workman had not left his address with the management for being contracted nor sent even a single communication to the office during long absence and did not bring the grievances before any authority until 80, hence the workman is not entitled for reinstatement.

4. In support of his contention the workman has filed certificate of the Depot. Superintendant Talkatora Lucknow paper no. 5 of list dated 6-12-83, which shows that the workman worked under the management as casual labour w.e.f. 15-6-73 to 20-5-74, which shows that the workman worked for more than 240 days.

5. In this deposition the workman has admitted that he was appointed regularly temporarily labour w.e.f. 15-6-73 and prior to that in 1972 he worked there through the kadar. The workman has filed letter dt. 30-4-73 from the District Manager FCI Lucknow, to the Regional Manager FCI Lucknow on the point of appointment of Shri Zulfiqar Hussain as Ancilliary Labour. He reported that on 1-3-76 there were 25 ancilliary mail labour. In that very letter it is stated as follows:

> As regards unsatisfactory working and conduct of Shri Zulfiqar Hussain and Akabar Hussain I am enclosing herewith a copy of report of Depot Superintendent FSD Lucknow for further necessary action.

This letter shows that in April 76 there was a question of the appointment of workman against whome there was a report of unsatisfactory work and conduct by Depot Superintendent FSD Lucknow. The workman has filed another letter of the Senior Assistant Manager dt. 27-7-76 paper no. 4 which shows that one Chakradhari Prasad was allowed to join duty after long absence and in his case the mangement directed to issue him a warning that if absented for a period of 15 days at a strength his services will be terminated as per para 15(A) of UP Industrial Employment Standing Order. This very letter further shows that the question of giving employment to Shri Zulfiqar Hussain was also considered and orders were passed as follows:

> Further the case of the employment of Shri Zulfiqar Hussain workman casual labour has been examined in the Regional Manager's Office and it has been decided that he may be engaged as Badli Worker i.e. whenever some regular or permanent ancillary labour proceeds on leave he may be appointed at his place as and when some regular vacancy arises he will be appointed in that vacancy.

This letter suggests that the workman had been pressing his case of being taken back in employment.

6. The workman has further filed the copy of the letter of the Depot Superintendent FSD Lucknow dated 10-6-74 i.e. within month of the date of alleged termination by management, in this letter addressed to District Manager FCI Lucknow, it has been intimated about workman and one Israr that they were very irregular towards performance their duty since regularisation in the corporation. They remained absent without any intimation to this office for a long period. In the end request was made to take suitable action against them and terminate their services with immediate effect. This letter shows that the workman's services had been regularised. The certificate referred above show that he had put in 240 days work hence if his services were to be terminated he should have been run down for misconduct of long absence and after obtaining his explanation and enquiry if any, his services should have been terminated by way of punishment.

7. Document no. 9 of the workman shows that his earned wages amounting to Rs. 1038.92 was released in his favour which the workman had admitted to have received in the year from 1983. Letter dt. 4th May 76 shows that the appointment of the workman was under consideration and Assistant Regional Manager had required information in which details of unsatisfactory work and conduct of the workman was required by Assistant Manager. If their was any unsatisfactory work them management should have run down the workman for disciplinary action. Paper no. 11 filed by the workman dt. 9-12-81 shows that in that one Kalideen was allowed to join duty after his long absence and his absence was treated as leave without pay. Letter further reads 'it appears that no action was taken to declare Kalideen as absconder nor order placing him under suspension issued which is very irregular. In the case of workman also neither he was suspended nor any action was taken against him. I am not inclined to believe the management version that they had no address of the workman to intimate or call him for duty, when he was in a regular anciliary workman.

8. In these circumstances as the workman has put 240 days of regular service is one calender year he was entitled to retrenchment compensation and notice pay etc. which was not done. The case of the management that the workman had aboded his service is falsify from the document filed by the workman which show that as early as 1976 question of his reappointment was being considered and this could not have been done without the representation of the workman consequently I believe that after ceasation of work from 20-5-74, the workman had been trying and approaching the management that he be given appointment.

9. If the manageemnt did not considered it proper to run him down for misconduct he should have been reinstated as was done in the case of Shri Kali Deen and his absence from 21-5-74 till reconsideration of appointment should have been treated as leave without pay. Now in view of law laid down in case of Sundermany's case and Santosh Gupta's case the cessation of work and not providing work to the workman after 20-5-74 will amount to termination which having been brought about without retrenchment compensation is illegal. The result is that the workman will have to be reinstated in services with full back wages.

10. I, therefore, hold that the action of the management of Food Corporation of India, Lucknow in terminating the services of Shri Zulfiqar Hussain w.e.f. 20-5-74 is not justified

The result is that the workman is entitled to be reinstated in service with full back wages.

11. I, therefore, give my award accordingly.

Dt. 25-11-85.

R. B. SRIVASTAVA, Presiding Officer.
[L-42012(13)|82|FCI-DIV(A)|D.V]

नई दिल्ली, 19 दिसम्बर, 1985

का. आ. 5766 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ब मैसर्स एम. ए. एम. सी. लिमिटेड, मैसर्स उत्तम सिंह, दुग्गल एण्ड कं. लिमि. एण्ड विनय कान्ट्रेक्टर्स, राजरप्पा वाशरी मैसर्स सप्लाइ कोलफील्ड्स लि. के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-12-85 को प्राप्त हुआ था ।

New Delhi, the 19th December, 1985

S.O. 5766.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2 Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of M|s. MAMC Ltd., M|s. Uttam Singh Duggal and Company Limited and M|s. Vinay Enginering Contractors of Rajrappa Washery of Central Coalfields Limited and their workmen which was received by the Central Government on the 9th Dec. 1985.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 19 of 1984

In the matter of Industrial Disputes Under Section 10 (1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of M|s. MAMC Ltd., M|s. Uttam Singh Duggal and Co. Ltd. and M|s. Vinay Engineering Contractors at Rajrappa Washery of CCL and their workmen.

APPEARANCES :

On behalf of M|s. MAMC Ltd. and Vinay Engineering : Shri J. P. Singh, Advocate.

On behalf of Uttam Singh, Duggal & Co. Ltd. : Shri R. S. Murthy, Advocate.

On behalf of the workmen : Shri Lalit Burman, Vice President, United Coal Workers Union.

STATE : Bihar INDUSTRY : Coal Washery

Dated, Dhanbad, the 20th November, 1985

AWARD

The Government of India, Ministry of Labour and Rehabilitation in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication under Order No. L-24011(3)|84-D. IV(B) dated, the 12th June, 1984.

THE SCHEDULE

"Whether the action of M|s. MAMC Ltd., M|s. Uttam Singh Duggal and Co. Ltd., and M|s. Vinay Engineering Contractors at Rajrappa Washery of Central Coalfields Ltd. in denying 7 paid holidays in a year to their workmen is justified ? If not to what relief the workmen are entitled ?

The case of the workmen is that the concerned workmen are engaged in various jobs connected with Rajrappa Washery of M|s. C.C. Ltd., which is the principal employer. The concerned workmen are working in Rajrappa Washery under the contractor namely M|s. MAMC Ltd., M|s. Uttam Singh Duggal and M|s. Vinay Engineering Ltd. The CCL is a subsidiary of the Coal India Ltd. and is public sector undertaking engaged in Coal Industry and its ancillary industry. The concerned workmen submitted a charter of demands and served a strike notice on the above named contractors. The conciliation ended in failure and thereafter the concerned workmen served a strike notice. Subsequently, some of the demand of the workmen were settled on the intervention of the ALC(C), Dhanbad and ALC(C), Ranchi but the demand of the workmen regarding 7 paid holidays in a calendar year could not be resoluted and the said dispute has been referred for adjudication. The coal industry has given 7 paid holidays in a year to all its workers engaged in the Coal Mines and the ancillary industry. The workmen engaged in Rajrappa Washery of M|s. C.C. Ltd. under the management of the contractors are entitled to 7 paid holidays in a year.

W.S. have been filed on behalf of the MAMC Ltd., M|s. Uttam Singh Duggal & Co. Ltd. and M|s. Vinany Engineering contractors. It will appear from the W.S. that the management of M|s. MAMC Ltd., have their headquarters at Durgapur and are manufacturers of certain mining implements and they also take contract in the erection of the coal washery. MAMC Ltd. has taken contract from CCL in erection of Coal Washery at Rajrappa. For the execution of the said contract M|s. MAMC Ltd. has engaged sub-contractors namely M|s. Uttam Singh Duggal & Co. Ltd. and M|s. Vinay Engineering Co. Ltd. M|s. MAMC have only a skeleton staff for the purpose of supervision and erection work which is being done by the two contractors. The workmen working under the MAMC and the contractors are not members of the United Coal Workers Union. MAMC is essentially an engineering concern and they have nothing to do with the production of coal and as such the dispute even if any between M|s. MAMC and their workmen is not a matter for adjudication within the jurisdiction of the Central Government Industrial Tribunal. The two other contractors are tractors engaged in the work under M|s. MAMC Ltd. The contractors have engaged local labour for the purpose and they have their own staff for supervision, who are governed by the terms and conditions of appointment in the Company. The contractors firms do not give 7 days paid holidays to their own staff. The contractors firms are also engineering concerns and have nothing to do with the production of coal and as such the case of their workmen would be covered as state subject and this Tribunal will have no jurisdiction to adjudicate the case.

The only question for decision is whether the concerned workmen are entitled to 7 paid holidays in a year.

The contractors have examined one witness in support of their case.

It appears from the case of the parties that the concerned workmen are not the workmen of Rajrappa Washery and CCL. The Central Coalfield Ltd. engaged M|s. MAMC Ltd., which is an engineering from the erection of Coal Washery at Rajrappa and the said MAMC Ltd. has engaged its sub-contractors M|s. Uttam Singh Duggal and M|s. Vinay Engineering to erect the coal washery. MW-1 has stated that the firms are engineering firm. It appears therefore that the workmen working under the contractors are not the workmen engaged in the Coal Mines or its anciliaries and that they are the workmen of the contractors who are erecting the coal washery as engineering concern. It is clear therefore that the workmen engaged by the contractors are not engaged in mines and as such this Tribunal has no jurisdiction to adjudicate the case of the workmen which falls under jurisdiction of the state Tribunal.

There is no material to hold that the concerned workmen are entitled to 7 paid holidays in a year.

In view of the above I hold that as this Tribunal has no jurisdition to adjudicate the dispute referred in the present reference, it cannot be decided whether the action of M|s. MAMC Ltd., M|s. Uttam Singh Duggal & Co. Ltd. and M|s. Vinay Engineering contractors at Rajrappa Washery at Central Coalfelds Ltd. in denying 7 paid holidays in a year to their workmen is justified or not.

The reference is answered accordingly.

Dated :—30-11-85.

I. N. SINHA, Presiding Officer
[No. L-24011|3|84-D. IV. (B)]

नई दिल्ली, 20 दिसम्बर, 1985

का. आ. 5767:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ब भोवरा (नार्थ) कोलियरी मैसर्स बी. सी. सी. एल. के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-12-1985 को प्राप्त हुआ था।

New Delhi, the 20th December, 1985

S.O. 5767.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhowra(N) Colliery of M|s. Bharat Coking Coal Limited and their workmen which was received by the Central Government on 2nd December, 1985.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 44 of 1985

In the matter of Industrial Disputes under Section 10(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of Bhowra (N) Colliery of M/s. BCCL and their workmen.

APPEARANCES :

On behalf of the employers: Shri R.S. Murthy, Advocate.

On behalf of the workmen : Shri J. D. Lall, Secretary, Bihar Mines Lal Jhanda Mazdoor Union, Bhowra.

STATE : Bihar. INDUSTRY : Coal.

Dated, Dhanbad, the 20th November, 1985

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication under Order No. L-24012(102)/84-D. IV(B), dated the 20th April, 1985.

SCHEDULE

"Whether the demand that the dependent of the deceased workman, Late Sahadeo Sao, Wagon Loader of Bhowra, Distt. Dhanbad who died while in service, should be employed by the management in their mine, is justified ? If so, to what relief the dependent of the deceased workman is entitled ?

The case of the workmen is that late Sahadeo Sao was a permanent wagon loader of Bhowra (N) Colliery of M/s. B.C.C. Ltd. and was working since before the nationalisation of Bhowra (North) Colliery. The said Bhowra (N) Colliery is coking coal mines which was nationalised with effect from 1-5-72. Late Sahadeo Sao was also a member of C.M.P.F. and his account No. is C|26|955. He died on 23-11-80 due to cardic respiratory failure in Bhowra Colliery hospital while he was still in service. Late Saha deo Sao died living behind his wife Kalia Devi a son named Sadhu Sao aged about 18 years and two minor daughters as his dependents. Under Clause 10.4.2 of NCWA-II one of the dependant of the deceased workman who dies while still in service is entitled to get employment under M/s. B.C.C.L. NCWA-II came into affect from 1-1-79. Smt. Kalia Devi wife of late Sahadeo Sao made several representations before the management for giving employment to her or to her son Sadhu Sao but the management did not concede her demand and thus the management violated the provisions of NCWA-II clause 10.4.2 of NCWA-II. The management has already paid to Kalia Devi Life Cover Scheme money amounting to Rs. 11,000 when she filed a claim application under Section 33C(2) of the I.D. Act before the Central Govt. Labour Court (No. 3), Dhanbad in December, 1984 which is payable according to clause 10.3.1 of NCWA-II. The union of workman also made a representation before the management for giving employment to one of the dependents of late Sahadeo Sao and when the management did not concede an industrial dispute was raised and thereafter the present reference was made for adjudication. The dependants of deceased late Sahadeo Sao are facing starvation due to the non employment of any, dependent. Provisions of clause 10.4.2 of NCWA-II is meant to give immediate relief to the dependent of the deceased workman due to sudden death of an earning member of the family. The management is bound by the agreement which was entered upon by him under NCWA-II and the management cannot back out on some pretext. It is submitted that one of the dependent of late Sahadeo Sao should be given employment by the management. It is submitted that Sadhu Sao son of the Sahadeo Sao be given employment in the mines by the management of M/s. BCCL since 3 months after the death of Sahadeo Sao.

The case of the management is that late Sahadoe Sao was employed as casual wagon loader in Bhowra North Colliery with effect from 8-3-76 and he died of a natural death on 23-11-80. Late Sahadeo Sao as casual wagon loader was a surface worker and had not put in 240 days of attendance in any continuous period of 12 months during the period of his employemnt. As per practice of the Coal industry casual wagon loaders are provided employment only when there is requirement for additional wagon loaders in loading coal over and above the regular and permanent wagon loader. There is no provision or practice in BCCL for providing employment to the dependents of a casual worker who may died while in service. The provisions of clause 10.4.3 of NCWA-II cover only permanent workers and it does not cover casual or badli workers. The said provisions cannot be enforced through adjudication proceeding because of constitutional infirmities.

The case of the management further is that the reference is not maintainable as the sponsoring union is not competent to raise the present dispute. The same having no existence in Bhowra (N) Colliery, the demand for job to the dependant of an ex-worker does not fall within scope of Section 2(k) of the I.D. Act. The reference is vague in as much as it does not refer to any particular dependant of late Sahadeo Sao. On the above plea it has been submitted on behalf of the management that the reference be adjudicated in favour of the management.

The simple question to be decided in this case is whether any of the dependent of late Sahadeo Sao is entitled for employment under the NCWA-II.

The management have examined two witnesses and the workman have also examined two witnesses in support of their respective cases. The documents produced on behalf of the workmen have been exhibited as Ext. W-1 to W-8 and the document produced on behalf of the management have been exhibited as Ext. M-1 to M-4/3.

It is the admitted case of the parties that late Sahadeo Sao was working as Vagon loader of Bhowra (N) Colliery and that he died on 23-11-80 while he was still in the service of Bhowra (North) Colliery. It is also admited that Smt. Kalia Devi is the widow and Sadhu Sao is the son of late Sahadeo Sao. The workmen have claimed employment of either Kalia devi wife of late Sahadeo Sao or his son Shadu Sao under the provisions of clause 10.4.2 of NCWA-II. The main objection raised on behalf of the management is that clause 10.4.2. of NCWA-II is not applicable in as much as late Sahadeo Sao was casual wagon loader and that the mnagement is not bound by the provisions of NCWA-II. NCWA-II admittedly came into force from 1-1-79. Clause 10-4-2 of NCWA-II deals with the employment of one dependent of the worker who dies while in service. The dependent for this purpose means the wife/husband as the case may be unmarried daughter son legally adopted son. It further provides that the dependent considered for employment should be physically fit and suitable for employment and he should not be aged more than 35 years provided that the age limit shall not apply in the case of spouse. This provision does not indicate that it is applicable in the case of permanent workmen only. It appears to be a general clause in which employment of one dependent of the deceased worker is to be given. This is a beneficial clause and social security to the workmen

who die in harness and as such we cannot differentiate a workman as permanent and casual for the application of clause 10.42. As this is a clause giving social security giving benefit to the workman, it is hard to accept the contention of the management that clause 10.4.2 is applicable in the case of permanent workmen only. I do not find anything from NCWA-II to indicate that clause 10.4.2 is applicable in the limited case of the permanent workmen only who die in harness.

The question of fact in dispute is whether the late Sahadeo Sao was a permanent or casual workman. Ext. W-8 is the certified standing order in which permanent employee is defined. A permanent is one who is appointed for an unlimited period or who has satisfactorily put in 6 months continued service in a permanent post as probationer. Ext. W-8 further defines a temporary employee. A temporary employee is one who is engaged for work which is of an essentially temporary character which is likely to be finished within a limited period. The standing order has not defined a casual workman. The said definition of temporary workman in the Standing Orders is not applicable in the case of late Sahadeo Sao. The work of a loader is a permanent job in any coal mine and it is not likely to be finished within a limited period and as such late Sahadeo Sao cannot be said to be a temporary employee of the colliery. It will appear from very definition of temporary workman that he is engaged for a short period but in the present case even according to the case of the management late Sahadeo Sao was working as Wagon loader from 1976 to 23-11-80. This long spell of about 5 years cannot be said to be an employment for a short period and that the said work was of a temporary character. It will appear that late Sahadeo Sao was engaged as a wagon loader on the work of permanent nature which was to last throughout the year. When a workman is engaged on a work of permanent nature which lasts throughout the year it is legitimate to expect that he would continue there permanently unless he has been engaged to fill a temporary need. The management has produced Bonus Register for the years, 1976, 1977, 1978 and 1980 to show that the concerned workman had not completed 240 days in any of the years and such he was not a permanent workman. It has also been tried to be shown by Ex. M-3 which is an identity card register and the bonus register that the concerned workman was employed since 8-3-76 but the said entry is belied by the documents of the management itself. Ext. M-4 is the Bonus Register for 1976 which shows that late Sahadeo Sao was working since the week commencing from 3-1-76. Thus it is clear that late Sahadeo Sao was not employed by the management since 8-3-76 as recorded in the Identity Card Register Ext. M-3 but was working since before that date i.e. at least since 3-1-76. The management has not been able to clarify the said discrepancy of the employment of late Sahadeo Sao since 8-3-76 as recorded in Ext. M-3. The management's document itself shows that late Sahadeo Sao was atleast employed as Wagon loader since 3-1-76. The workmen have confronted MW-2 in his cross-examination with the Bonus Card standing in the name of Sahadeo Saw. It has been marked as X. It shows that the late Sahadeo Sao was in the employment even since January, 1975. This document has not been challenged to be a forged and fabricated document and as such this shows that late Sahadeo Sao was in employment of the management even in the year 1975.

MW-2 is a Bonus Clerk. He has produced Bonus Registers for the years 1976, 1977, 1979 and 1980. He has stated himself in his cross-examination that he has no personal knowledge regarding the time since when Sahadeo Sao was working. He has stated that in the Bonus Register of 1976 Sahadeo Sao is shown to be working since the week ending 3-1-76 and as such the Bonus Register of 1976 shows that Sahadeo Sao was working since 31-12-75. He was unable to say how the date of employment in Ext. M-3 was written. Thus the only witness produced on behalf of the management has not been able to explain as to how the date of employment was recorded in the Identity Card register Ext. M-3. Whatever MW-2 has stated the same is based on the record. He has stated that the Bonus Registers of period prior to 1976 are also available in the office but he had not seen the same. The specific case of the workmen is that late Sahadeo Sao was working as loader since before the nationalisation and the Bonus Registers of the period prior to 1976 were available with the management but even then the management did not produce those registers to show, if it was a fact, that late Sahadeo Sao was not working as a Loader prior to 1976. There is yet another document which could have shown whether late Sahadeo Sao was working from 1976 as stated by the management or was working since before that, MW-2 has stated that he did not see Form H in respect of Sahadeo Sao. He has further stated that Form H will show the date from which Sahadeo Sao became member of C.M.P.F. The management has not produced the said Form H to show the date from which Sahadeo Sao became a member of C.M.P.F. The fact that the management have suppressed the Bonus Register prior to 1976 and Form H shows that as the late Sahadeo Sao was working as Wagon Loader since before 1976. The same has not been produced as that would have established the fact that Sahadeo Sao was working since before 1976 and that he had attendance of 240 days in the previous years. Taking all these facts and circumstances into consideration it appears that late Sahadeo Sao was actually a permanent workman and was not a casual workman.

The management has produced Ext. M-2 dated 1-7-1985 and circulated on 16-9-85. It is in respect of clause 9.4.2 of NCWA-III which is equivalent to 10.4.2 of NCWA-II. It has been filed to show that in the last meeting of the Director held on 25-6-85 it was felt that dependents of casual|temporary|badli workers who die or become permanently disabled cannot claim the benefit of clause 9.4.2 of NCWA-III they being not permanent employee of the company. This circular was issued sometime after the present reference was made and the said letter cannot override the provision of clause 10.4.2 NCWA-II or 9.4.2 of NCWA-III. This is an unilateral decision which cannot bind the workman.

NCWA-II is a settlement between the Chairman-cum-Managing Director, BCCL besides others with the workers representative as such the management of M|s. BCCL is bound by the settlement arrived at by him with the workmen under Section 18 of the Industrial Disputes Act and now the management cannot back out from the admitted agreement.

It is submitted on behalf of the management that the demand for provision of a job to the dependent of a deceased workman does not fall within the scope of Section 2(k) of the I.D. Act and that the dependent of an Ex-employee is not a workman. It is further submitted that the case of the dependent of a deceased workman cannot be covered under "Any person" under Section 2(k) of the I.D. Act. Their Lordships in 3 SCLJ page 1896 at page 1913 has summarised the meaning of "Any person" under Section 2(k) of the I.D. Act and has stated "Having regard to the scheme and objects of the act and its other provision, the expression "Any person" in Section 2(k) of the Act must be read subject to such limitations and qualifications as arrived from the context; The two crucial limitations are (1). The dispute must be a real dispute between the parties to the dispute so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other and (2) The person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour, the parties to the dispute have a direct or substantial interest In the absence of such interest the dispute cannot be said to be a real dispute between the parties where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment and conditions of labour the dispute is raised need not be, strictly speaking, a 'workman' within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workman as a class have a direct or substantial interest." In the present case clause 0.4.2 of NCWA-II has become one of the terms of employment of the workmen as the same provides a social security in the employment of the dependent of a deceased employee dying in harness and all the workmen are interested in upholding the said advantage which they have been able to achieve by the settlement under NCWA-II. All the workmen have a direct and substantial interest in the present dispute as the management may in the case of other employees dying in harness, may not give employment to their dependent and it is for this reason that the workmen are interested and have raised the dispute. The union of the workmen have raised a dispute regarding the un-employment of the dependent of late Sahadeo Sao when the management had refused the employment to the dependent of late Sahadeo Sao and thereafter the workmen have raised the present dispute in which they are substantially interested. It will also appear that the present industrial dispute is a real dispute based on

the terms as provided in clause 10.4.2 of NCWA-II which is capable of being adjudicated giving necessary relief to the dependent of late Sahadeo Sao. The definition in Section 2(k) of the ID Act is wide enough to cover a dispute raised by the workmen in regard to non-employment of the dependent of late Sahadeo Sao who may not be the workman of the management. In view of the discussion made above I hold that the present dispute is an industrial dispute as defined under Section 2(k) of the I.D. Act and that the person on whose behalf the industrial dispute has been raised need not be a workman of the management himself.

The present industrial dispute has been raised by the Secretary Bihar Mines Lal Jhanda Mazdoor Union, Bhowra. WW-2 Shri Raghunandan Rai is the President of Central Committee of Bihar Lal Jhanda Mazdoor Union. He has stated that his union is working in Bhowra (North) and Bhowra (South) Colliery since June, 1981. He has also produced some documents to show that his union was having discussions with the management in respect of labour problems. Ext. W-7 is the record note of discussion of Colliery Consultative Committee meeting held on 2-6-83 in the office of the Agent, Bhowra (North) Colliery. It will appear that besides three other union Bihar Lal Jhanda Mines Union was also representing the union side in the discussion with the management. It is clear from this Ext. W-7 that Bihar Mines Lal Jhanda Mines Union was working in Bhowra (North) Colliery and that the management was having discussion with the said union along with other unions. I hold therefore that the sponsoring union is competent to raise the present industrial dispute as it has existence in Bhowra (North) Colliery and the management also was having discussions with it regarding the labour problems. As I have discussed above it was not necesary for the dependent of late Sahadeo Sao to be a member of the union. The only question was that whether the dependent of late Sahadeo Sao regarding whom, the dispute is raised was one in whose employment, non-employment terms of employment or conditions of labour the wrkmen had a direct or substantial interest. I have already held above that the workmen represented by the union had a direct and substantial interest in obtaining the employment of the dependet of late Sahadeo Sao who was admittedly a workman of the management working as a wagon loader prior to his death.

It will appear from the W.S. of the workmen that at first Smt. Kalia Devi, wife of Late Sahadeo Sao, made representations to the management for giving employment to her or her son Sadhu Sao but the management did not give employment to either of them. Kalia Devi widow of late Sahadeo Sao has been examined as WW-1 in this case. She has stated that she has a son named Sadhu Sao and that there is no other person except him to look after her and her family. She has stated that she had applied to the management for giving employment to her son Sadhu Sao. It appears therefore that although in the beginning she had alternatively prayed for giving employment to her or to her son Sadhu Sao, she has given up her demand for giving employment to her and she is now praying for giving employment to Sadhu Sao son of late Sahadeo Sao. The manageemnt has raised a point that Sadhu Sao was aged about 20 years and as such he could not have been given the employment soon after the death of late Sahadeo Sao as Sadhu Sao had not attained the age of 18 years. The management has relied regarding the age of Sadhu Sao on the evidence of WW-1 Kalie Devi. Kalia Devi is an illiterate lady and she is not expected to give the exact age of her son. She has only stated the approximate age of Sadhu Sao. Ext. W-1 is a certificate from the Mukhiya Bhowra Gram Panchayat which shows that Sadhu Sao was aged about 22 years. Ext. W-5 is an affidavit sworn by Kalia Devi dated 4-7-85 in which she has stated the age of Sadhu Sao as 22 years. Thus it is clear that Sadhu Sao is aged more than 22 years and as such employment can be given to him. Moreover the management had never stated before that no employment was being given to Sadhu Sao because he was aged less than 18 years. The management has taken just a stray place of evidence of illiterate lady to raise a objection that employment could not have been given to Sadhu Sao because he was aged less than 18 years at the time of the death of his father. In my opinion the said objection raised on behalf of the management is untenable.

The learned Advocate appearing on behalf of the management has cited several decisions which I do not think necessary to discuss. I have given my findings on the facts established in this case and for that purpose I have considered the point of law involved for the decision of the case.

In the result, I hold that the demand of the workmen that Sadhu Sao dependent of the deceased workman late Sahadeo Sao Wagon loader of Bhowra (North) Colliery who died while in service should be employed by the management in their mine and that the said demand of the workmen is justified. The management is therefore directed to give employment to Sadhu Sao son of late Sahadeo Sao within one month from the date of the notification of the Award.

This is my Award.

Dt : 20-11-85.

I. N. SINHA, Presiding Officer

[No. L-24012(102)/84-D.IV(B)]
R. K. GUPTA, Desk Officer.

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